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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Note

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 56/86 of 12 December 2001 and met at United Nations Headquarters from 18 to 28 March 2002.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held 3 meetings, the 240th and 241st meetings, on 18 March, and the 242nd meeting, on 27 March. The Working Group of the Whole held 8 meetings, the 1st meeting on 18 March; the 2nd meeting on 19 March; the 3rd and 4th meetings on 20 March; the 5th and 6th meetings on 21 March; the 7th meeting on 22 March; and the 8th meeting on 25 March.

4. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, Hans Corell.

5. At its 240th and 241st meetings, on 18 March, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981[1] and taking into account the results of the pre-session consultations among its Member States, elected its Bureau, as follows:

Chairman:

Markiyan Kulyk (Ukraine)

Vice-Chairpersons:

Sarah Al Bakri Devadason (Malaysia)
Annick Oestreicher (Luxembourg)
Soumaia Zorai (Tunisia)

Rapporteur:

Gaile Ann Ramoutar (Trinidad and Tobago)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Special Committee. The Acting Principal Legal Officer of the Division, Anne Fosty, acted as Deputy Secretary of the Special Committee and Secretary to its Working Group. The Codification Division provided the substantive services for the Special Committee and its Working Group.

8. Also at its 240th meeting, the Special Committee adopted the following agenda (A/AC.182/L.112):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolution 56/86 of 12 December 2001, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

9. At the same meeting, the Special Committee established a Working Group of the Whole, and at its 241st meeting, the Committee agreed on the following organization of work: proposals relating to the maintenance of international peace and security, including implementation of the Charter provisions related to assistance to third States affected by sanctions (six meetings); proposals regarding the peaceful settlement of disputes between States (two meetings); proposals concerning the Trusteeship Council (one meeting); proposals on the ways and means of improving the working methods of the Committee (three meetings); question of the identification of new subjects (one meeting); and consideration and adoption of the report (two meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items.

10. General statements touching upon all items or upon several of them were made at the 240th meeting as well as prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

11. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary-General,[2] in particular, the most recent report, entitled "Implementation of the provisions of the Charter of the

United Nations related to assistance to third States affected by the application of sanctions" (A/56/303), and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162, of 15 December 1997 (A/53/312); a working paper submitted by the Russian Federation at the current session entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" (A/AC.182/L.100/Rev.1/Add.1; see para. 54 below); a working paper submitted by the Russian Federation at the 2000 session of the Committee entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1);[3] a working paper submitted by the Russian Federation at the 1998 session of the Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[4] a revised working paper submitted by the Libyan Arab Jamahiriya at the current session of the Special Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1; see para. 89 below); a working paper submitted by the Libyan Arab Jamahiriya at the 2001 session of the Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110 and Corr.1);[5] an informal working paper submitted by the Russian Federation at the 1997 session of the Committee entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[6] a working paper also submitted by the Russian Federation at the 1998 session of the Special Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[7] a working paper submitted by the delegation of Cuba at the 1998 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Add.1);[8] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[9] a working paper submitted at the 1999 session of the Special Committee by Belarus and the Russian Federation containing a draft resolution of the General Assembly and a revision thereof (A/AC.182/L.104/Rev.1);[10] and a revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Committee containing a revised version of a draft resolution of the General Assembly (A/AC.182/L.104/Rev.2).[11]

12. With regard to the topic "Peaceful settlement of disputes between States", the Special Committee had before it a revised proposal entitled "Establishment of a dispute prevention and early settlement service" (A/AC.182/L.96), submitted by Sierra Leone at the 1997 session of the Special Committee and orally revised at the 1998 session;[12] an informal paper entitled "Elements for a resolution on dispute prevention and settlement", submitted by the United Kingdom of Great Britain and Northern Ireland at the 1999 session of the Special Committee;[13] a further revised draft resolution on dispute prevention and settlement submitted by Sierra Leone and the United Kingdom of Great Britain and Northern Ireland at the 2001 session of the Special Committee (A/AC.182/L.111);[14] a revised version of that document (A/AC.182/L.111/Rev.1);[15] as well as a further revised draft resolution submitted at the current session (A/AC.182/L.111/Rev.2; see para.162 below).

13. With regard to the topic "Working methods of the Special Committee", the Special Committee had before it a proposal submitted by Japan at the current session on further revisions to the draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.1; see para. 171 below); a working paper submitted by Japan at the 2000 session entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107);[16] and a proposal by Japan submitted also at the 2000 session, on ways and means of improving the working methods and enhancing the efficiency of the Special Committee (A/AC.182/L.108).[17]

14. At its 242nd meeting, on 27 March, the Special Committee adopted the report of its 2002 session.

Chapter II
Recommendations of the Special Committee

15. The Special Committee submits to the General Assembly:

(a) As regards the question of the maintenance of international peace and security, in particular, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the recommendations in paragraphs 49 and 50 below;

(b) As regards the question of the maintenance of international peace and security, in particular, the strengthening of the role of the Organization and enhancing its effectiveness, the recommendation in paragraph 134 below;

(c) As regards the question of the peaceful settlement of disputes between States, in particular, the prevention and settlement of disputes, the draft resolution in paragraph 162 below.

Chapter III
Maintenance of international peace and security

A. Implementation of the Charter provisions related to assistance to third States affected by sanctions

16. The question of the implementation of the Charter provisions related to assistance to third States affected by sanctions was discussed in the course of the general exchange of views held during the 240th meeting of the Special Committee, on 18 March, and during the 1st, 2nd and 5th meetings of the Working Group, on 18, 19 and 21 March.

17. It was observed that, despite the priority accorded to the consideration of assistance to third States affected by the implementation of sanctions in General Assembly resolutions, little progress had been achieved over the years on the subject. Accordingly, it was asserted that the Special Committee should work assiduously in a constructive manner instead of making excuses for its inaction. In particular, it was observed that the time was propitious for an in-depth discussion of the summary of the deliberations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to affected third States, as convened by the Secretary-General in New York from 24 to 26 June 1998 (A/53/312).

18. Several delegations noted that sanctions were an extreme measure, which should only be imposed as a last resort. It was averred that, pursuant to the collective security system established under the Charter, sanctions were an instrument for the maintenance of international peace and security and for the prevention of conflict. It was noted that sanctions could be imposed only when the Security Council had determined that there was a threat to peace, a breach of the peace or an act of aggression. It was also recalled that the purpose of sanctions was to bring about compliance with the decisions of the Security Council and that sanctions were imposed with the purpose of effecting a change of behaviour on the part of a recalcitrant State. It was also observed that sanctions were a powerful tool available to the international community which should never be used to punish innocent people and should not lead to the economic destabilization of the targeted or third States.

19. The comment was made that, to obviate the adverse effects of sanctions, sanctions regimes should be reviewed and adjusted to take into account other contemporary problems, stressing that sanctions should not be a negative factor leading to the creation of extreme poverty. The view was also expressed that sanctions regimes should have clearly defined mandates, be limited in duration, subject to regular review, be removed as soon as the reason for which they had been imposed no longer existed and should be renewed on the basis of non-compliance or on account of their continued relevance and effectiveness. It was also noted that before sanctions were imposed their impact on the civilian population and on third States should be carefully assessed and consultations with such third States conducted. Furthermore, the opinion was expressed that the establishment of criteria and conditions for the imposition of sanctions in conformity with the Charter of the United Nations, principles of international law, justice and equity would reduce to a minimum their negative effects.

20. Concerning the creation of mechanisms for providing relief, several delegations contended that a special standing consultative mechanism or a functional mechanism to offset the adverse effects of sanctions and to provide assistance should be established without delay. In that connection, some delegations expressed their preference for the creation of a fund, which they stressed should be adequately resourced. It was pointed out that such a fund could be funded from voluntary contributions, while also underscoring that funding from assessed contributions, as was the case with peacekeeping operations, would guarantee automatic and easy access for affected third States.

21. Other practical relief measures that were suggested included commercial and trade exemptions or concessions, according priority to contractors of affected third States when awarding contracts for investment in the targeted State, as well as the possibilities for direct consultations with affected third States.

22. It was stated that the Security Council acted on behalf of the international community as a whole when it imposed sanctions under Chapter VII of the Charter. Consequently, it had the responsibility to assist third States adversely affected by the application of sanctions. Thus it was suggested, for example, that the Security Council should act, without delay, on any application made by a State, pursuant to Article 50 of the Charter, should make timely exemptions for humanitarian purposes, consider the costs suffered, in particular by developing countries as a result of sanctions, and should, on a regular basis, monitor the negative effects of sanctions.

23. In addition, several delegations echoed their acceptance of the principle of burden-sharing and equitable distribution of costs as countenanced in the deliberations and main findings of the ad hoc expert group meeting, asserting that the principle was relevant in assessing the impact of sanctions, under Articles 49 and 50 of the Charter, and would act as a means for encouraging compliance with sanctions regimes established by the Security Council. It was emphasized that the provisions of the Charter related to assistance to third States affected by sanctions were an integral part of the overall system for preventive and enforcement measures.

24. It was also observed that increased recourse to the use of sanctions in recent years had prompted the international community to consider ways of reducing the negative effects of sanctions on non-targeted States while at the same time safeguarding their effectiveness. In that connection, it was stated that the use of targeted or "smart" sanctions had been an important step in addressing those concerns. It was also recalled that initiatives outside the framework of the United Nations had assisted in the greater appreciation and understanding of the emphasis and trend towards targeted sanctions, such as armed embargoes and travel restrictions, as tools available for use by the Security Council.

25. More specifically, Member States as well as the principal organs of the United Nations, in particular the Security Council and the Secretariat, were urged to make use of the recommendations that had emerged from the pioneering seminar on smart sanctions, held in London; the Interlaken Process on the effectiveness of sanctions; the Bonn-Berlin process on armed embargoes and travel sanctions, including flight bans; as well as the Stockholm process, which was expected to continue work on the implementation and monitoring of targeted sanctions and assistance to States in their implementation of sanctions.

26. On the other hand, the point was made that "smart sanctions" was clearly a misnomer, which was intended to disguise the harmful effects of sanctions, and sanctions as a tool available only to dominant and powerful States. According to this view, sanctions had become an economic siege or a declaration of war.

27. Some delegations observed that the implementation of Charter provisions on assistance to third States could not be separated from the general and overall issue relating to the imposition and application of sanctions. In that context, it was also stressed that addressing the question of assistance to third States affected by the implementation of sanctions alone was not enough without also addressing the critical challenges posed by the manner in which sanctions regimes were established, sanctions were imposed and applied. On that account, it was stated that certain actions by some members of the Security Council concerning the application of sanctions were contrary to the Charter and in violation of international law. Furthermore, the view was expressed that the application of double standards in the imposition of sanctions not only had a bearing on the credibility of

the entire sanctions regime but also threatened international peace and security.

28. Moreover, it was suggested that the question of assistance to third States should also be perceived from perspectives concerning the overall question of equitable representation on and increase in the membership of the Security Council and its related reform. The importance of addressing those complementary aspects was therefore accentuated.

29. A point of emphasis was made that the role of the United Nations in the provision of assistance to third States affected by the application of sanctions was critical, noting that although financial institutions could be consulted on such matters, the United Nations bore the primary responsibility.

30. Several delegations alluded to the work of the Security Council, in particular the work of its informal working group on general issues on sanctions, established pursuant to the note of the President of the Security Council of 17 April 2000 (S/2000/319), and urged an early agreement on the proposed outcome of the Chairman of the working group.

31. Delegations also welcomed the progress made by the Security Council in addressing issues relating to sanctions, especially its efforts to improve and streamline the working procedures of sanctions committees and to facilitate access to them by affected third States. In that connection, it was noted that the note of the President of the Security Council of 29 February 1999 (S/1999/92) had signalled the willingness of the Council to take heed of the wishes of the international community. Moreover, it was suggested that the debate of the Security Council on general issues relating to sanctions held on 22 and 25 October 2001 (S/PV.4394 and Resumption 1), at which the Interlaken, the Bonn-Berlin and the Stockholm processes were subjects of deliberation, was another example of how the Security Council was responding positively to the call of the international community to mitigate the adverse effects of sanctions, particularly on third States.

32. While lauding the efforts of the Security Council, some delegations also highlighted the role of the General Assembly, indicating that the work of the two bodies was not mutually exclusive. In that connection, the view was expressed, with reference to Article 24 of the Charter, that the Security Council could submit special reports on sanctions for the consideration of the General Assembly, in the exercise of its powers under Article 14. Such reports could be devoted to a factual and insightful analysis of the work of the Council on questions relating to sanctions.

33. The point was also made that a working group of the Sixth Committee could suitably address the various aspects relating to the question of assistance to third States affected by the application of sanctions. Several delegations expressed their support for the proposal submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (see sect. B below) and the proposal by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (see sect. C below) as complementary and meriting further consideration.

34. In addition, mention was made of the role of the Economic and Social Council in monitoring economic assistance to third States especially affected by economic problems related to sanctions.

35. Several delegations endorsed the deliberations and main findings of the ad hoc expert group meeting. It was suggested that the methodology developed for assessing the consequences on third States as contained in the Secretary-General's report on the ad hoc expert group meeting provided a solid basis for achieving concrete results.

36. Other delegations noted that the deliberations and main findings constituted a useful basis for the consideration of measures aimed at minimizing the negative impact of sanctions on vulnerable groups in the target States and on the economies of third States. However, the comment was made that the report of the Secretary-General on the ability of the Secretariat to implement the recommendations of the ad hoc expert group meeting, focusing on their political, financial and administrative feasibility, was essential to the work of the Special Committee on the question of sanctions. In that connection, doubts were expressed as to whether there could be any useful progress without the report of the Secretary-General. Some delegations expressed their disappointment that the report of the Secretary-General had not been issued, despite the request by the General Assembly in its previous resolutions, including resolution 56/87 of 12 December 2001.

37. Other delegations, however, pointed out that the unavailability of the views of the Secretary-General should not delay a discussion on the deliberations and main findings of the ad hoc expert group meeting. It was indicated that an analysis of the reports of the Secretary-General revealed some similarities between views of the Secretary-General and the conclusions and recommendations of the ad hoc expert group meeting. Some delegations spoke in favour of establishing a working group of the Sixth Committee to deal with the legal and financial aspects of the matter.

38. The point was made that there was a need to consider other aspects such as the regulation and calculation of the indirect damage caused by the imposition of sanctions, the scale to be applied for assessing such damage and measuring the assistance to be given, including whether the level of economic development and the character of the relationship between the third State and the target State should be taken into account. It was also observed that other suggestions that had been made by delegations at previous sessions, such as the need for regular meetings of the Security Council with States affected by the application of sanctions, the establishment of a trust fund as well as issues relating to the criteria for its establishment and its source of funding, could be also discussed.

39. Concerning the procedure to be adopted by the Special Committee in the substantive consideration of the report containing the deliberations and main findings of the ad hoc expert group meeting, it was suggested that the Committee should embark on a detailed paragraph-by-paragraph discussion of the deliberations and main findings.

40. Some delegations advocated a cautious approach and cautioned against using the deliberations and main findings of the ad hoc expert group meeting as the only basis for the work of the Special Committee on this question, noting that since the issuance of the report in 1998 some developments had taken place and progress had been achieved, which needed to be taken into account. In that connection, they pointed to the work of the working group of the Security Council on general sanctions as well as the work in the Sixth Committee during the fifty-sixth session of the General Assembly leading to the adoption of resolution 56/87, singling out paragraphs 3 and 4 of the resolution. Other delegations also alluded to the changed political circumstances since the issuance of the report on the deliberations and main findings of the ad hoc expert group meeting.

41. Some other delegations proposed that the focus of any consideration should be on those parts of the report dealing with conclusions and recommendations (A/53/312, paras. 49-57). However, it was reiterated that a consideration of the matter would be premature in the absence of the views of the Secretary-General on the feasibility of implementing the results of the deliberations and main findings. Moreover, the provisions of paragraph 12 of resolution 56/87 were referred to as necessitating an additional thought-provoking report of the Secretary-General on the implementation of the resolution, including information on how paragraphs 3 and 4 of the resolution were implemented within the Secretariat.

42. In addition, a suggestion was made that a briefing by the Chairman of the informal working group of the Security Council on general issues on sanctions on the progress of its work or an exchange of views between members of the Security Council and the Special Committee on the matter could facilitate the work of the Special Committee.

43. In response to a request for an oral report on the activities of the Security Council informal working group on general issues on sanctions, the Secretariat, at the 5th meeting of the Working Group, on 21 March, informed the Special Committee that, in addition to the information contained in paragraph 4 of the report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/56/303), the informal working group had held 12 formal meetings as at 16 November 2000, the date of its last meeting. Its Chairman's proposed outcome had yet to be finalized. The Committee was also informed that the Security Council, after consultations among its members, had reached agreement that the Permanent Representative of Cameroon to the United Nations would serve as Chairman of the informal working group until 31 December 2003.

44. Regarding the question whether the pre-assessment and ongoing assessment reports referred to in paragraphs 3 and 4 of resolution 56/87 could assist the Special Committee in its work, the Secretariat, at the same meeting, informed the Special Committee that the sanctions committees, established by the Security

Council, and the Secretariat were guided by the mandates of the Security Council in the preparation of such reports. A number of humanitarian impact assessments had been prepared in connection with sanctions measures imposed against Liberia (S/2001/939) and the territory of Afghanistan formerly controlled by the Taliban (S/2001/241, S/2001/695, S/2001/1086, S/2001/1215). Such reports, however, addressed the impact of sanctions on the targeted States.

45. It was also pointed out that in the practice of the Security Council there had been examples of requests in which the provisions of Article 50 of the Charter had been expressly invoked and the Council had established the mechanisms for consultations, including the setting up of open-ended working groups to examine requests for assistance and to advise particular sanctions committees on appropriate action. That had been the case, for example, with the Committee established pursuant to Security Council resolution 661 (1990), concerning the situation between Iraq and Kuwait (the "661 Sanctions Committee"), which in order to carry out its mandate under Council resolution 669 (1990) had set up an open-ended working group to examine the requests for assistance.

46. Also at the 5th meeting of the Working Group, in response to comments made by delegations at the 1st and 2nd meetings of the Working Group concerning the further input of the Secretary-General regarding the political, financial and administrative feasibility of the recommendations of the ad hoc expert group contained in the report of the Secretary-General (A/53/312), the Secretariat informed the Special Committee that the Secretary-General, according to paragraph 6 of his 2001 report on sanctions (A/56/303), had reiterated his understanding that the General Assembly was interested in receiving his views concerning the feasibility of implementing the recommendations of the ad hoc expert group considering the limited capacity and resources of the Secretariat and once again indicated that the issues relating to the relevant capacity and modalities of the Secretariat continued to be under review by several intergovernmental bodies concerned with the question of assistance to third States affected by the application of sanctions. In that connection, it was noted that the Secretary-General had provided, and had expressed his willingness to continue to provide, his full support for the ongoing review process, including his views and recommendations as required, in order to ensure the implementation of relevant intergovernmental mandates in a timely and efficient manner.

47. While thanking the Secretariat for the information, several delegations drew attention to the request of the General Assembly and reiterated their wish for the views of the Secretary-General, underscoring the fact that the submission of such additional views during the fifty-seventh session of the General Assembly would be necessary for advancing the work of the Special Committee. It was suggested that such views could be contained in the reports contemplated under paragraphs 6 and 12 of resolution 56/87.

48. Although the efforts of the 661 Sanctions Committee were appreciated, the point was made that its work had not yielded any positive results despite, for instance, proposals made by a State non-member recently invited to address it (its 227th meeting, on 3 December 2001), primarily because of objections from some of its members.

49. The Special Committee welcomed the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 (A/53/312) and recommended that at its fifty-seventh session the General Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Special Committee at its 2002 session, the views of States, the organizations of the United Nations system, the international financial institutions and other relevant international organizations, as contained in the reports of the Secretary-General (A/54/383 and Add.1 and A/55/295 and Add.1), as well as the views of the Secretary-General regarding the deliberations and main findings of the ad hoc expert group to be submitted pursuant to General Assembly resolutions 54/107 of 9 December 1999, 55/157 of 12 December 2000 and 56/87 of 12 December 2001, and the relevant information to be submitted by the Secretary-General on the follow-up to the note by the President of the Security Council (S/1999/92), and to address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of General Assembly

resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 13 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 and 56/87, taking into account all reports of the Secretary-General on the subject, the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, the forthcoming report of the informal working group of the Security Council on general issues relating to sanctions, as well as the proposals presented and views expressed in the Special Committee.

50. The Special Committee strongly encouraged the Secretary-General to expedite the preparation, before the fifty-seventh session of the General Assembly, for consideration by the Sixth Committee, of his report, as requested by the Assembly in paragraph 5 of its resolutions 54/107 and 55/157, as well as in paragraph 6 of its resolution 56/87, which would take into account, inter alia, the further work undertaken recently on the issue by the Security Council, the General Assembly and its relevant subsidiary organs, and the Economic and Social Council.

B. Consideration of the revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" and the addendum thereto

51. During the general exchange of views held at the 240th meeting of the Special Committee, support was expressed for the revised working paper submitted by the Russian Federation, with several delegations noting that it constituted a useful basis for further consideration of the topic. The need for developing a consensus on the broad parameters governing sanctions regimes was stressed. Certain provisions of the proposal were found consonant with the main findings and recommendations of the ad hoc expert group meeting as summarized in the report of the Secretary-General on the topic (A/53/312). It was observed that particular attention should be paid to the "humanitarian limits" of sanctions in order to alleviate the suffering of the most vulnerable groups of the civilian population, namely children, women and the elderly. The hope was expressed that at the current session it would be possible to make further progress on the working paper.

52. On the other hand, while recognizing that during the previous session progress had been made on the item, it was observed that the Special Committee should strive to avoid duplication of the work carried out by other organs or groups within the United Nations system, especially when they were better suited to discuss those issues.

53. The sponsor delegation drew to the attention of the Special Committee its vision of the sanctions problem. It considered sanctions a powerful tool for the deterrence and prevention of conflicts. However, sanctions should not lead to the destabilization of the economy either in the target State or in third States. The sponsor expressed the view that an agreement on the principles governing the application of sanctions could assist the Security Council in its work and strengthen the legitimacy of its decisions. The sponsor also expressed its general satisfaction at the progress achieved during the first reading of the revised working paper.

54. At the 2nd meeting of the Working Group, the representative of the Russian Federation introduced an addendum to the revised working paper (A/AC.182/L.100/Rev.1/Add.1), which read as follows:

"Section I

"Paragraph 1

"Reformulate as follows:

"As Security Council action under Chapter VII of the Charter of the United Nations, sanctions are a matter of the utmost seriousness and concern. Sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate.

"Paragraph 2

"(a) Replace the words 'in strict conformity' by the words 'in conformity'.

"(b) Replace the words 'neighbouring countries' by the words 'third States'.

"(c) Delete the reference to a 'time frame'.

"(d) Replace with the following text:

"'Sanctions should be established in strict conformity with the Charter, with clear objectives, provision for regular review and precise conditions for their lifting. The Security Council has the ability to determine the time frame of sanctions.'

"(e) Add the following text:

"'The imposition on a State which is the object of sanctions of additional conditions for the cessation or suspension of sanctions is not permissible except as a result of newly discovered serious circumstances.'

"Paragraph 3

"Replace the word 'unambiguous' by the word 'clear' and the word 'must' by the word 'may'.

"Paragraph 4

"Delete the words 'existing political order'.

"Paragraph 5

"Add at the end of the paragraph the following wording from General Assembly resolution 51/242: 'Sanctions regimes should be commensurate with these objectives'.

"Paragraph 6

"Add at the end the following words: 'The Secretariat must make an objective assessment of the consequences of sanctions for third States prior to their introduction in respect of the target State.'

"Paragraph 10

"Replace with the following text:

"'Sanctions regimes must also ensure that appropriate conditions are created for allowing an adequate supply of humanitarian material to reach the civilian population. Foodstuffs, medicines and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard it is recognized that efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports.'

"Paragraph 11

"Reformulate as follows:

"'Following the introduction of sanctions, the Secretariat should be requested to provide assistance in monitoring their effects for third countries which have suffered or may suffer as a result of their implementation, so that the Security Council and its sanctions committees may receive timely information and early estimates in this respect and, while maintaining the effectiveness of the sanctions regime, may make the necessary corrections or partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries.'

"Section II

"Introduction and paragraph 1

"Replace the words 'humanitarian limits' and 'humanitarian considerations' by the words 'humanitarian aspects'.

"Paragraph 3

"Add at the end the following words: 'Sanctions regimes must correspond to the provisions of international humanitarian law, including human rights instruments'.

"Paragraph 4

"Add at the end the following words: 'Time limits must be established for sanctions regimes; such time limits may be extended only on the decision of the Security Council.'

"Paragraph 6

"At the beginning of the sentence, add the word 'additional' before the word 'measures'.

"Paragraph 8

"Replace the words 'views of international humanitarian organizations of generally recognized authority' by the words 'views of international humanitarian organizations whose mandates have been generally recognized'.

"Paragraph 9

"Add at the end the following words: 'Basic items for hygiene, sewage and sanitation equipment, emergency vehicles and other vehicles along with fuel and lubricants'.

"Paragraph 10

"(a) Add to the list 'principles of neutrality, independence and transparency'.

"(b) Add at the end the following words 'a condition of providing such assistance should be the prior clearly expressed consent of the recipient State or a request on its part'.

"Paragraph 11

"(a) Delete the words 'must be taken into account' and insert the words 'when necessary'.

"(b) ['as transparent as possible' — English remains the same]

"Paragraph 12

"Add at the end the following words: 'The threat or use of force for the purposes of distributing humanitarian aid must not occur, unless there is a decision to that effect by the Security Council.'

"Paragraph 13

"Replace the words 'humanitarian limits' by the words 'humanitarian aspects'."

55. In its introductory remarks the sponsor delegation explained that the addendum comprised those proposals and amendments that had been made by the delegations during the first reading of the revised working paper at the 2000 and 2001 sessions of the Special Committee. The sponsor thanked all delegations for their contribution to the discussion of the revised working paper and noted that the eventual product would be of practical value to the United Nations bodies concerned as well as to States and relevant international organizations. It expressed the hope that, with a constructive approach, the Committee would be able to reach consensus on the final wording of the document at the current session.

56. Delegations commended the sponsor delegation for its continuing efforts to find compromise solutions to the problematic provisions and reiterated their views expressed during the general debate. In response to doubts about the need for the continuing work of the Special Committee on the revised working paper in view of the draft document on the same subject being prepared by the informal working group of the Security Council, some delegations expressed the view that the work undertaken by the Security Council should not prevent the Special Committee from pursuing its work on the legal aspects of sanctions. They considered the Special Committee to be an appropriate forum for discussion of the issues of imposition and implementation of sanctions and stressed the importance of the work of the Special Committee in that area due to the increased resort to sanctions and their negative consequences for target States as well as third States. Referring to the mandate of the Special Committee contained in General Assembly resolution 56/86, they supported the approach that the revised working paper and the addendum thereto should be considered at the current session of the Special Committee.

57. Suggestions were made regarding the title, the preamble and the form of a final document. In connection with the title, the view was expressed that it should reflect more accurately the essence of the provisions under discussion. In that regard, concern was voiced as to the appropriateness of the reference in the title to "sanctions" and "other coercive measures", in the absence of a clear definition of those measures and the specific reference thereto in the Charter. In response to that concern, some delegations favoured further research on the concept of sanctions with a view to working out the appropriate definition. The suggestion was also made that the document should contain a short preamble that would, inter alia, explain the main purpose of the document as well as make reference to relevant General Assembly resolutions, including resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace".

58. As to the form of a final document, the sponsor delegation expressed its preference for a declaration to

be appended to a short General Assembly resolution. Some delegations strongly preferred that the provisions of the future document should be formulated in less categorical terms. They favoured the preparation of a final document in the form of general, non-mandatory guidelines rather than as obligatory directives for the Security Council. It was also suggested that the title of the document should be amended accordingly and that the form of the final document should be discussed at a later stage. While not opposing such an approach, the sponsor delegation underscored that the form of the document might affect the manner in which the provisions were being discussed as well as their content.

59. At its 3rd meeting, the Working Group commenced, on a paragraph-by-paragraph basis, the second reading of the revised working paper (A/AC.182/L.100/Rev.1) in conjunction with the addendum thereto (A/AC.182/L.100/Rev.1/Add.1). The second reading was held on the understanding that delegations should focus on new proposals and avoid the repetition of the proposals that had already been reflected in the 2000 and 2001 reports of the Special Committee, all of which remained relevant and valid. The view was also expressed that the discussion should be considered to be preliminary in nature and that silence should not be taken as agreement.

Section I

Paragraph 1

60. As a general remark on the paragraph, some delegations reiterated their view concerning the preliminary nature of the discussion on the paragraph and the entire text of the proposal. They also recalled that other organs of the Organization were seized of similar issues and therefore caution was urged against a needless duplication of work. In that context, the point was made that there was a clear need for maximum coherence, coordination and transparency across the entire United Nations system in matters of sanctions. Conversely, it was observed that the Special Committee, being a subsidiary organ established by the General Assembly, had a clear mandate in the matter which had been established by the Assembly and did not duplicate the work of other forums. In that connection, particular reference was made to the functions and powers of the General Assembly under Articles 10 and 11 of the Charter.

61. With regard to the new formulation of the paragraph set out in the addendum, some delegations expressed the view that the adoption of any of the "peaceful options" referred to at the end of the provision should not be a condition precedent to the application of Article 41 of the Charter. In that connection, it was recalled that a similar point was reflected in paragraph 53 of the report of the Committee to the General Assembly at its fifty-third session.[18] It was suggested that the words "when other peaceful options provided by the Charter are inadequate" should be removed from the text and, instead, that a new sentence should be added, reading: "The foregoing is without prejudice to the application of sanctions being combined with other peaceful means provided for in the Charter or which, notwithstanding not being specifically provided for therein, are lawful." In terms of a further drafting modification, a proposal was made that the words "when other peaceful options provided by the Charter" should be replaced by the words "only after all peaceful means have been exhausted". The attention of the Working Group was also drawn to the danger of overly compressing the text of the paragraph; it was suggested that the opening words could be slightly reformulated to indicate that the Security Council must act in accordance with Chapter VII of the Charter. It was also suggested that the Spanish text should be more closely aligned with the English version. One delegation pointed out that the new formulation was acceptable to it in its entirety.

62. Some delegations expressed a preference for the original text of this paragraph, which contained an explicit reference to peaceful means of settling the dispute in accordance with Chapter VI and to the provisional measures provided for in Article 40 of the Charter. It was reiterated that the application of sanctions should be an extreme measure, which should be resorted to only after all other peaceful means of settling the dispute have been exhausted and only when the Security Council has determined the existence of a threat to peace, a breach of the peace or an act of aggression. It was proposed, as a way of making drafting changes to the original text, that the word "application" at the beginning of the paragraph and the words ", including the provisional measures provided for in Article 40 of the Charter of the United Nations" should be omitted.

63. Some delegations felt that sanctions should not necessarily be considered a measure of last resort.

Certain "smart" sanctions, such as arms embargoes, personal assets freezes and visa-based travel restrictions on certain individuals could rather be seen as preventive measures. It was pointed out that a requirement to first exhaust provisional measures before imposing sanctions could in practice unduly restrict the ability of the Security Council to act swiftly in certain situations under Chapter VII. In that connection, particular reference was made to the terrorist attacks against the Unites States of America on 11 September 2001 and the speedy reaction thereto by the Security Council. It was stressed that the current formulation of the paragraph seemed incompatible with the requirement for the Security Council to act expeditiously. The proposed guidelines should not impose restrictions on the Council and its activities. Moreover, the institutional autonomy of the Security Council must be recognized and maintained as well. It was suggested that the language of the paragraph should be aligned with that in annex II to General Assembly resolution 51/242 dealing with the question of sanctions imposed by the United Nations.

64. On the other hand, while recognizing the need for the Security Council to act promptly in certain cases, it was observed that the Council should make its decisions in all instances "in strict conformity with the Charter and other applicable principles and norms of international law". The point was also made that the Security Council decisions on sanctions should be in line with the provisions of the final document.

65. In commenting on the debate, the sponsor observed that sanctions should be resorted to with utmost caution since some of them in recent years had been transformed into a surprisingly destructive instrument. In the absence of the legal measures regulating the imposition and application of sanctions, the consequences thereof might be harmful not only for one State or a group of States, but for the whole international community. The need for an international legal foundation for the introduction and application of sanctions was underscored. It was recalled that, in the past, sanctions had been introduced in various forms, including in a non-binding form, such as General Assembly sanctions in relation to Southern Rhodesia and South Africa. It was up to the Security Council to determine whether all peaceful means had been exhausted. However, the Security Council must impose sanctions only after it had determined the existence of a threat to peace, a breach of the peace or an act of aggression. Without such a determination, sanctions were illegitimate. The sponsor stressed that, in imposing sanctions, the Security Council should act in compliance with the Charter.

Paragraph 2

66. Several delegations expressed their strong preference for the original text of the paragraph and underscored the importance of the provision. According to them, sanctions could not be applied indefinitely and therefore should have a "time frame", be subject to regular periodic reviews and be lifted as soon as international peace and security had been restored. The introduction of a clear time frame in the duration of sanctions could stimulate the target State to fulfil the precise conditions necessary for their lifting. While generally sharing that approach, some delegations expressed the view that the requirement of the time frame on sanctions should not be formulated in a mandatory sense.

67. With regard to the amendments to the paragraph listed in the addendum, support was expressed for the proposed change in subparagraph (b) to replace the words "neighbouring countries" by the words "third States", since sanctions often affected States beyond the immediate region, particularly in a globalized world. The point was made that decisions on lifting sanctions should be made by the Security Council taking into account the views not only of a State which was the object of sanctions but also the views of States which were directly affected by sanctions beyond the target State. With regard to subparagraph (c), views were expressed against the deletion of the reference to a "time frame" in the light of the comments by delegations reflected in paragraph 66 above.

68. Concerning the first sentence in subparagraph (d), suggestions were made that, consistent with Article 1 of the Charter, a reference to "the principles of justice and international law" should be inserted after the words "in strict conformity with the Charter", the word "strict" could be deleted, the words "and precise" should be added before the word "objectives", and the word "clear" should be inserted before the word "precise", so that the text, in pertinent part, would read "clear and precise conditions". Conversely, the point was made that the word "strict" should be retained in the provision. As to the last sentence in subparagraph (d), it was suggested that it could be removed in its entirety, since the time frame of sanctions should be

introduced in a non-obligatory manner in order not to restrict the authority of the Security Council in those matters. It was also suggested that the wording in subparagraph (d) could be divided into two parts: one would establish the principle that sanctions should be in strict conformity with the Charter and the norms and rules of international law, and the other would set out the precise criteria for measuring the effectiveness of the application of the sanctions. It was also stressed that, once international peace and security were restored, sanctions must be lifted.

69. As regards subparagraph (e), a view was expressed in favour of retaining the proposed provisions concerning the impermissibility of imposing additional conditions for the cessation or suspension of sanctions on a target State which was the object of sanctions. While generally sharing the view that the new conditions should not be imposed on the target State without reason, some delegations reiterated that the proposed provision, in particular the words "is not permissible", should be reformulated to read as a flexible, general guideline for the Security Council in matters related to sanctions rather than a mandatory directive imposing restrictive conditions on the Council which would be inconsistent with the Charter. It was suggested that the expression "newly discovered serious circumstances" should be replaced by the words "developments in a situation".

70. In commenting on the remarks made in the Working Group, the sponsor delegation indicated its receptiveness to most of the proposals put forward by delegations. It supported the amendments set out in subparagraphs (a) and (b) and shared the view of those delegations who believed that the deletion of the reference to a time frame was inappropriate. The sponsor was agreeable to adding in subparagraph (d) a reference to the "rules of international law" after the words "in strict conformity with the Charter" and including in the final text of the provision the wording contained in subparagraph (e) concerning the impermissibility of imposing additional conditions on the target State. However, the restriction foreseen under the latter provision should be understood to apply to unilateral acts by certain States and not as limiting the competence of the Security Council under Chapter VII of the Charter.

Paragraphs 3 and 4

71. As regards paragraph 3, several delegations were of the view that the Security Council should not impose sanctions without giving prior notice to the target State, and therefore objected to the proposed amendment that the word "must" should be replaced by the less obligatory word "may". It was also suggested that the expression "unambiguous notice" should be replaced by the words "clear and explicit notice" and the word "may" should be substituted for "should". The point was made that the Security Council had the discretional authority on the matter and that it usually gave notice to a target State when making a determination under Article 39 and then taking actions under Articles 40 and 41 of the Charter. However, prior notice should not be considered a mandatory requirement for the Council in all cases. Other delegations, while understanding the general thrust of paragraph 3, felt that the requirement of prior notice was not appropriate and practical in all situations, especially in the context of "smart" sanctions such as arms embargoes, assets freezes and travel restrictions on certain individuals. The latter sanctions would not have the desired effectiveness if imposed with prior notice. The point was made that such a requirement could impede prompt action by the Security Council in practical terms and would impose a condition which did not exist in the Charter.

72. With regard to paragraph 4, differing views were expressed. Some delegations preferred the retention of the original text of the provision and opposed the proposed amendment to delete from it the words "or existing political order". In support of that approach, it was argued that references to the existing political order could be found in certain General Assembly resolutions. Moreover, the reference was seen by those delegations as being consonant with both constitutional law and international law. The view was expressed that sanctions should not be used to change "the existing political system". The determination as to whether the existing political order was "lawful" or "unlawful" was deemed to be an internal matter for the individual State concerned. The view was also expressed that the qualifying word "lawful" could be deleted. Other delegations recalled their previous observations on the matter and reiterated their support for the proposed deletion of the words "or existing political order". It was recognized that the provision was in the realm of delicate issues and therefore should be considered with caution. By way of compromise, it was suggested that

the qualifying word "lawful" should also apply to the expression "or existing political order". As a drafting suggestion, it was observed that the provisions should be formulated in less categorical terms.

73. The sponsor delegation, in commenting on the debate, expressed its preference, in paragraph 3, for the word "should" or "shall" to be used instead of the word "may", and, in paragraph 4, for the words "or existing political order" to be retained. As regards the proposal to formulate the provision in a non-obligatory sense, it was the sponsor's understanding that the format of the future document would be addressed at a later stage.

Paragraph 5

74. No objections were voiced against the proposed inclusion at the end of the paragraph of the sentence "Sanctions regimes should be commensurate with these objectives". It was observed that the main thrust of the paragraph was seen as exerting pressure on a State or entities, or individuals, without using force, to make them comply with the decisions of the Security Council when there was a threat to international peace and security. In order to ensure consistency of the provisions under consideration, it was suggested that the paragraph should be placed before paragraphs 3 and 4. A preference was also expressed for the insertion of the words "in order to restore international peace and security" after the word "security". The sponsor delegation indicated its receptiveness to the proposed modifications.

Paragraph 6

75. While understanding was expressed for the need to ensure, in creating a sanctions regime, that the unintended adverse impact of sanctions on third States should be reduced to a minimum, a question was raised as to whether sanctions could not inflict material and financial harm in order to restore international peace and security. It was also observed that the proposed new additional requirement that the Secretariat must make an objective assessment of the consequences of sanctions prior to their introduction would create a legal condition precedent that did not exist in the Charter. It was suggested that the latter requirement should be formulated as a general guideline indicating that "an assessment should be made if at all possible" or "if circumstances so allow".

76. The sponsor underscored the vital need for an objective assessment of the consequences of sanctions prior to their introduction since sanctions could inflict serious damage not only on the target State but on third States as well. Such assessments should be made by the Secretariat not on its own initiative but at the request of the Security Council. The sponsor expressed support for the inclusion of such a provision in the text of the paragraph. A statement was made in support of the sponsor's approach to and vision of the paragraph.

Paragraphs 7 to 11

77. By way of a general remark, some delegations reserved their position on the paragraphs and reiterated that all previous comments and suggestions thereon as reflected in the 2000 and 2001 reports of the Special Committee remained valid for further discussion. The point was made that the purpose of paragraph 7 was not clear in view of the proposed wording contained in paragraph 2 (e), and therefore the former paragraph should be deleted. It was also observed that the thrust of paragraphs 7, 8 and 9 appeared to be covered by the provisions in paragraphs 2 and 6, together with the amendments thereto contained in the addendum.

78. The sponsor observed that in the course of the first reading of paragraphs 7, 8 and 9, no specific proposals or amendments had been put forward and reiterated the view that any delegation had the right to revert to any of the provisions under discussion. With regard to the new formulation of paragraph 10, the sponsor suggested the deletion, in the last sentence, of the words "it is recognized that". The sponsor also urged delegations to finalize the document as soon as possible in fulfilment of the Special Committee's mandate under the applicable General Assembly resolutions and pledged its support in that complex but important endeavour.

Section II

Introduction and paragraphs 1 to 3

79. With respect to the introduction and throughout the text, the sponsor delegation expressed its preference for retaining in the text the words "humanitarian limits" instead of the expression "humanitarian aspects". As regards paragraph 3, the sponsor delegation was agreeable to the proposed addition of the words "Sanctions regimes must correspond to the provisions of international

humanitarian law, including human rights" and recalled that references to international humanitarian law could be found in a number of Security Council resolutions. On the other hand, one delegation observed that the reference to international humanitarian law in paragraph 3 appeared inappropriate and suggested that the word "including" should be replaced by the words "as well as". It was also suggested that the expression "human rights instruments" should be replaced by the words "international law of human rights".

Paragraph 4

80. Several delegations expressed the view that the paragraph dealing with the "time limits" in fact covered the essence of the second sentence of the new formulation of paragraph 2 (d), in section I, providing for the Security Council's ability to determine the "time frame" of sanctions. The wording of the latter paragraph appeared to those delegations more appropriate and they reiterated that the provisions should be formulated in a coherent manner and in less categorical terms.

81. The sponsor delegation observed that the proposed wording in paragraph 4 reflected the new trend in the application of sanctions according to which they might be extended only on the appropriate decision of the Security Council and not automatically. Several delegations supported the wording in the paragraphs as amended in the addendum and reiterated that sanctions should have "time limits" and not be "open-ended".

Paragraphs 5 to 8

82. No specific comments were made relating to the paragraphs.

Paragraph 9

83. The Working Group was reminded that the proposed wording in the annex should not be included at the end of the paragraph, but immediately after the word "items" in the last sentence thereof.

Paragraphs 10 to 13

84. With regard to paragraph 10, the sponsor delegation suggested that the proposed new wording, in both subparagraphs (a) and (b), could be added to the text.

85. Concerning paragraph 12, the view was expressed that the thrust of the new additional wording suggested for inclusion appeared incomprehensible. It was suggested that the wording could be either deleted or reformulated in more acceptable terms. The sponsor delegation recalled that it was not its proposal to include the new wording under consideration. It also observed that humanitarian aid should be provided in accordance with the decisions of the Security Council and the principle of humanity. The point was made that distribution of humanitarian assistance should take place only "with the agreement and help of the recipient State and under the supervision of the United Nations". It was also suggested that instead of the wording in the addendum, the following wording could be added at the end of the paragraph: "Armed convoys should not be used in the distribution of humanitarian assistance unless there is a decision to that effect by the Security Council."

86. By way of a general remark, the sponsor delegation wondered whether it would be appropriate to request the Secretariat to prepare a compilation of all proposals advanced by delegations. In response, the point was made that, in view of the preliminary nature of the discussions, it was premature to address such a request.

87. At its 4th meeting, the Working Group concluded the second reading of the revised working paper of the Russian Federation in conjunction with its addendum thereto.

C. Consideration of the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

88. During the general exchange of views held at the 240th meeting of the Special Committee, several delegations expressed their continued support for the proposal of the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions and stressed the salience of its continued consideration.

89. At the 4th meeting of the Working Group, on 20 March, the Libyan Arab Jamahiriya introduced a revised working paper on the strengthening of certain principles concerning the impact and application of

sanctions (A/AC.182/L.110/Rev.1). The working paper read as follows:

"I. **Introduction**

"At the previous session of the Special Committee, the Libyan Arab Jamahiriya submitted a working paper under the item on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/AC.182/L.110 and Corr.1), and some of the matters it addressed were considered. In view of the issues raised during the discussion, and given the intimation of some delegations that they would have to consult with their governments and the consequent call for consideration to be postponed, the Jamahiriya deems it appropriate to resubmit the paper, in revised form, at the present session.

"2. There can be no doubt that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization has a mandate to discuss this paper. The Special Committee is one of the instruments through which the General Assembly functions. In accordance with Articles 10, 11, and 13 of the Charter, the General Assembly may consider and make recommendations on any questions 'within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter' (Article 10), may 'consider the general principles of cooperation in the maintenance of international peace and security' (Article 11, paragraph 1), and shall 'initiate studies and make recommendations for the purpose of ... promoting international cooperation in the political field and encouraging the progressive development of international law and its codification' (Article 13, paragraph 1).

"II. **The power of the Security Council to impose sanctions is subject to the Charter and to international law**

"3. The power to employ sanctions is derived from the Charter and must thus be exercised in a framework of respect for the Charter and for public international law.

"This means that compliance with the Charter and public international law is required:

"When the decision is taken to impose sanctions;

"And when practical measures are being taken to implement the sanctions.

"4. The Security Council has the power to impose sanctions under the Charter. (The current provisions of the Charter relating to the powers of the Security Council, its composition and voting in the Council are, however, no longer appropriate to the present situation of the international community, and the Great Libyan Arab Jamahiriya has now been advocating their revision for a quarter of a century.)

"The legal validity of the Security Council's actions derives from the 'empowerment' granted to the Council by Member States and from its authorization to act on their behalf in the matter of the maintenance of international peace and security (see Article 24, paragraph 1). This empowerment is not absolute or unrestricted, and paragraph 2 of the same Article qualifies it by stating that: 'In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations'. The purposes of the United Nations, as stated in Article 1, require the Council to exercise its powers 'in conformity with the principles of justice and international law' (Article 1, paragraph 1).

"This being the case, it is necessary to reconsider the Council's authority to act alone in imposing sanctions. This is because the imposition of sanctions, as an action of far-reaching effect, should be decided

internationally and not by a decision adopted in accordance with international law alone, in the sense that the decision is made by the General Assembly of the United Nations or that the Assembly has a role in its adoption or in commenting on it. The interests of peoples and nations are not properly represented in the Security Council, and it is monopolized by parties associated with uniform or similar motives and interests.

"5. The Council possesses under the Charter an inherent power with respect to situations that represent a threat to or breach of the peace and cases of aggression. This is a power that is based on the absolute priority accorded to the maintenance of international peace and security. Like other powers, however, it must be exercised in the light of the provisions and principles of the Charter, that is to say that the Council must use it in a non-discriminatory and non-arbitrary manner that accords with reality if it is to remain within the framework of the authorization for which provision is made in Article 24, paragraph 1. This raises questions as to the legitimacy of many of the positions taken by the Council to justify its characterization as a threat to international peace and security of international disputes or regional situations that could be resolved by peaceful means and do not pose a threat to international security. There are many other situations where the Council has refrained from giving this characterization to cases of blatant armed aggression and to situations that do indeed pose an immediate and serious threat to international peace and security.

"Accordingly, the imposition of sanctions must be legitimate. The reasons that necessitate the imposition of sanctions must be identified and stated in advance, and it may also be necessary to establish for each of these reasons its appropriate sanction or sanctions.

III. Sanctions and coercive measures constitute exceptional action, in the sense that such action is a last resort and must only be imposed within the narrowest bounds and after all peaceful means have been exhausted

"6. It is true that the Charter does not explicitly require the Council to exhaust all peaceful means before resorting to the measures stipulated in Article 41, but that it must do so is to be inferred implicitly from the provisions of the Charter and from the nature of sanctions themselves.

(a) Article 24, paragraph 2, provides that: 'In discharging these duties [i.e. the maintenance of international peace and security] the Security Council shall act in accordance with the purposes and principles of the United Nations'. According to Article 1, these purposes include that '... to bring about ... by peaceful means, and in conformity with the principles of justice and international law [, adjustment or settlement ... of disputes] ...'.

"(b) The adoption of coercive measures is by its nature an exceptional action, representing as it does interference in the affairs of the State targeted by sanctions and being detrimental to the interests of that State. It must therefore be based on necessity, inasmuch as the Council finds itself in a situation in which it can meet the case before it only by deciding to impose sanctions as a last resort and having exhausted all non-coercive means.

"(c) The Council was given determinative powers to assess the appropriateness of imposing sanctions and to select the type of sanctions to be imposed in order to enable it to confront emergency or urgent situations where it might not be appropriate to employ non-coercive means, and the Council is required not to be arbitrary in using these powers. Accordingly, when it resorts to the imposition of sanctions before exhausting all possible peaceful means of addressing a situation before it in cases other than

emergency or urgent cases, it is being arbitrary in the use of its powers.

"IV. The imposition of sanctions must not place upon the targeted State financial, economic or humanitarian burdens that are additional to and other than those resulting from the direct application of the sanctions to the extent necessary to achieve their objective

"7. This restriction is based on the provisions of Article 50 of the Charter and is fully in accord with the *travaux préparatoires* for the Charter, as endorsed by the States participating in the San Francisco Conference (see *United Nations Conference on International Organization*, vol. XII, p. 397).

"It is also a direct application of the established principles of international law as they relate to the legal regime of countermeasures in general. These principles require that such measures should not violate the principles of proportionality and the avoidance of excess and that they should not lead to the wholesale and extensive violation of human rights.

"The comments of States on the draft articles on State responsibility, as adopted in first reading by the International Law Commission, indicate general international endorsement of the rules relating to restrictions on countermeasures. The basis of these rules is that there should be proportionality between the substance of the sanctions imposed and their impact, in one respect, and their legitimate objective, in another, so that they do not inflict extreme or excessive damage on the targeted State and do not cause harm that has no connection with the objective for which they were adopted.

"V. Sanctions must achieve their goal

"This restriction relates to the legitimacy of the objective and the justice of the sanction. This is because sanctions, in view of the fact that they constitute an action taken against a specific State in order to induce it to comply with international decisions, must not be prejudicial to the rights of any third State. This restriction must also be observed within the State targeted, in the sense that sanctions must not violate basic rights, especially those of vulnerable groups, in that State.

"VI. The targeted State has a right to seek and obtain just compensation for any unlawful damage done to it by sanctions imposed without good grounds or in a way that exceeds requirements and is incompatible with the notion of proportionality with the achievement of their objective

"8. This is merely a necessary consequence of subjecting the power to impose sanctions to the Charter and to international law, it being conceivable that sanctions that violate the Charter, are ultra vires, are inappropriate or deviate from the objective could be imposed.

"It is true that giving effect to this principle could encounter practical difficulties concerning the parties competent to determine excess and the designation of the international party or parties responsible. It nevertheless remains an application of the general principles of law, just as international organizations are international legal persons subject, like States, to be held accountable for their unlawful acts and thence for the discharge of the obligations imposed on them by the law of liability. Otherwise there would be no sense in subjecting them to the principle of legality and regarding them as obliged to respect their own charters and international law.

"9. Accordingly, sanctions must be:

"(a) Lawful in terms of the reason for them, so that they are based on a genuine, actual reason that justifies their imposition;

"(b) Lawful in their implementation, so that they do not constitute a flagrant violation of human rights and are not disproportionate;

"(c) Fair and just;

"(d) Capable of achieving their objective;

"(e) Such that whoever imposes them is held accountable in the event they are arbitrary, excessive or cause unjustifiable harm to the interests of the targeted State or third States and compensates those countries for the damage caused when the measures involved are unlawful."

90. The sponsor delegation introduced the working paper by section.

91. At the 4th and 5th meetings of the Working Group, on 20 and 21 March, some delegations reiterated their support for the proposal, recognizing in particular the pertinence of its objectives and the principles contained therein. Several delegations remarked that the working paper was informative and raised issues and ideas that merited full and closer attention. Noting that the proposal offered interesting legal perspectives, other delegations indicated that more time was required for study and reflection.

92. In reaction to a procedural question regarding a possible impression created from the main heading of the proposal that it was concerned per se with the question relating to assistance to third States affected by the application of sanctions, a clarification was offered that the title "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" should be deleted from the document, since it did not form part of the original text submitted in the Arabic language.

93. It was noted that the working paper not only provided an accurate legal rationale for the revised working paper submitted by the Russian Federation on basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation, but also, in alluding to the right to seek and obtain compensation, added an important and new dimension to the examination by the Organization of questions relating to sanctions. It was also observed that the Libyan Arab Jamahiriya and the Russian Federation proposals constituted a totality of relevant principles applicable to sanctions. A suggestion was therefore made that the sponsors of the two proposals could consult with a view to coordinating their efforts.

94. The point was made that the issues raised in the working paper presented a certain degree of overlap with activities of other bodies, and that the resources of the Organization could optimally be utilized if the matter were to be addressed by such other forums. However, other delegations countered by asserting that the Special Committee was the appropriate forum for such consideration. Pursuant to its mandate, it had been established by the General Assembly precisely to address legal and other aspects relating to the Charter and the strengthening of the role of the Organization.

95. The view was also expressed that the proposal was not entirely balanced. It was noted that it created an erroneous impression that there was general abuse in the imposition and application of sanctions. It was remarked in this regard that such an imbalance could be overcome by a restatement of the principle that the target State was under a duty to comply, promptly, fully and without conditions, with decisions of the Security Council concerning the imposition of sanctions and that all States were under an obligation to assist in ensuring compliance and carrying out the measures determined by the Council acting pursuant to Chapter VII of the Charter.

96. On the other hand, it was pointed out that such a balance was apparent when the working paper was considered from a broader perspective, premised on the principle of the sovereign equality of States. It was observed that the proposal raised fundamental questions and highlighted the need for the international community to ponder and reflect upon how it responded to international situations, including the manner in which it imposed and applied sanctions. It was remarked that the question of sanctions affected the international community as a whole, and consequently all States should participate in assessing the implications that the imposition of sanctions would have in the conduct of international relations.

97. It was suggested, for example, that conceptual and institutional changes would be required to meet such challenges. According to this view, it was stated that Member States, taking into account their policy-making functions, should play a more prominent role in the design of sanctions regimes.

98. Some delegations underlined the role of the General Assembly in the maintenance of international peace and security, as a more representative, democratic and transparent organ, and cautioned

against undermining its competence and authority under the Charter. In that connection, General Assembly resolution 377 (V) of 3 November 1950, entitled "Uniting for peace", was also cited with approval.

99. Referring to comments made during the 2001 session of the Special Committee, the point was reiterated that some of the issues in the proposal had been the subject of discussion by the General Assembly in the context of its work on An Agenda for Peace.[19] Thus it was suggested that, in order to maintain the balance, previously agreed language as contained in annex II to General Assembly resolution 51/242 should be employed in any future modifications of the working paper.

100. Several delegations made preliminary comments and observations on the various sections and paragraphs of the revised working paper.

101. Delegations concurred in the proposition, in section II of the working paper, that the power of the Security Council to impose sanctions derived from the Charter of the United Nations. In reaffirming such competency, a question was raised with regard to the legitimacy of sanctions imposed outside the framework of the Charter. It was noted by some delegations that the Charter defined in a precise manner the circumstances in which sanctions or other coercive measure could be imposed, namely where there was a threat to peace, a breach of the peace or an act of aggression. However, some doubt was raised regarding the necessity of reconsidering the authority of the Council to act alone in imposing sanctions, as suggested in the working paper. It was noted that such an approach would lead to a loss of focus from the main objective of the proposal, which was to ensure that sanctions were just, fair and proportionate. The view was also expressed that taking such a route would undermine the coherent collective system established under the Charter.

102. In voicing their support for the principles contained in section III of the working paper, a number of delegations affirmed the exceptional nature of sanctions and asserted that they should be imposed as a last resort, only after all means of peaceful settlement of disputes had been exhausted. According to this view, several delegations reiterated a contention made at the 2001 session of the Special Committee that such an interpretation was consistent with the Charter of the United Nations, in particular Chapter VI. Other delegations, however, pointed out that such an assertion could not be sustained, in the light of the clear provisions of the Charter providing for circumstances in which the Security Council would act and, as appropriate, impose sanctions and other coercive measures. The possibility of having recourse to the *travaux préparatoires* of the United Nations Conference on International Organization to ascertain the intention of the framers of the Charter was considered.

103. Several delegations also stressed that sanctions must be objective, limited and imposed for a specific time frame. It was underscored that sanctions were not supposed to be punitive in nature. The point was made that the paradox of sanctions, namely that they were easy to impose and difficult to lift, had tended to lead to unintended results. Evidently, sanctions had a direct impact on the civilian population rather than on the Governments which they were intended to target.

104. The principle of proportionality, in section IV, was supported as being well grounded under customary and conventional international law, including the law relating to self-defence, as well as in principles of punishment in criminal law, where the penalty or sanction imposed must fit the crime. It was pointed out that the propositions relating to the principle of proportionality were reflective of modern trends in the law relating to countermeasures and were consistent with the approaches taken by the International Law Commission in the context of the draft articles on responsibility of States for internationally wrongful acts.[20]

105. Some delegations questioned the propriety of the criminal law analogy, asserting that sanctions were primarily intended for prevention, not punishment. While some delegations expressed their understanding of the principles contained in the proposal, they raised concerns about their practical application. Questions were raised, for example, regarding how proportionality was going to be measured or assessed, and by whom, and how the principles were to be applied when contemporary sanctions regimes focused on "smart" or targeted sanctions, imposed not only against a State but also against individuals. It was underlined that since it could be seen from the practice of the Security Council that the nature of sanctions imposed by it had evolved, it was important that the

working paper should recognize and take into account such an evolution.

106. Several delegations also stressed the importance of respect for human rights and fundamental freedoms. Thus, support was expressed for the principle, in section V, that sanctions must not violate basic human rights, especially of vulnerable groups in the targeted State. Some delegations, in offering examples of how sanctions had affected vulnerable groups, particularly women and children, observed that sanctions had resulted in the violation of every human right and fundamental freedom contemplated in human rights discourse, including the right to life, the right to food and the right to education. Some delegations raised questions concerning the practical application of human rights clauses in the context of sanctions where, for instance, the freezing of assets could constitute a denial of the right to property.

107. The point was also made that sanctions should not be contrary to rules of international law having the character of jus cogens, such as the prohibition of genocide.

108. Regarding the proposition that sanctions must not be prejudicial to the rights of any third State, questions were raised as to the scope of the term "the rights of any third State".

109. Several delegations also expressed their support for the underlying notion, in section VI, of a right to seek and obtain just compensation. They stressed that sanctions should be lawful, fair and equitable and that their imposition and implementation should be based on the Charter. Some delegations cited examples of how their countries had been affected by sanctions as targeted States or as third States, and pointed out that in some cases sanctions had not been lifted even after all conditions had been met, thereby raising legitimate questions of responsibility, liability and compensation, which the proposal sought to have answered.

110. A questions was also raised regarding the implications, under the Charter, of an emerging practice of "suspension" as opposed to "lifting" of sanctions.

111. Several delegations noted that the possibility of attributing international responsibility to the United Nations gave rise to interesting legal considerations. Some delegations expressed the view that any effort to attribute any possible illegality to actions taken by the Security Council, in the exercise of its powers under the Charter, would be problematic. It was stressed that sanctions were an important instrument available to the Security Council in the maintenance of international peace and security. It was also noted that it was difficult in practice to envision the application of the principle of just compensation to "smart" or targeted sanctions.

112. Questions were also raised regarding the scope of attribution of international responsibility, whether the Security Council itself or its individual members would, in such cases, be liable, jointly or severally.

113. Considering that the United Nations possessed international legal personality and the capacity to operate on an international plane, and was consequently a bearer of rights and duties under international law, it was contended that it could be liable under international law, and aspects relating to international responsibility and compensation were relevant and would come into play. It was noted that such issues required more thorough examination, and consequently the sponsor delegation was requested to develop further and thoroughly analyse the ideas and the legal principles underpinning such responsibility.

114. Regarding the procedure to be followed in the further consideration of the working paper, it was suggested by some delegations that the Committee should commence a paragraph-by-paragraph consideration. Other delegations, however, noted that it would be premature to do so since the comments made were of a preliminary nature and further consultations with capitals were necessary before embarking on a detailed substantive discussion. On the suggestion of the Chairman, it was agreed that the Committee could commence such a paragraph-by-paragraph discussion at its next session.

D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

115. During the general exchange of views held at the 240th meeting of the Special Committee, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal

basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations",[21] which it had submitted to the Special Committee at its 1998 session. The sponsor delegation reiterated that the aim of the proposal was to improve United Nations peacekeeping operations by elaborating relevant recommendations, taking into account the extensive experience of the Organization in that area. Owing to the multifaceted nature of the issue, it was suggested that the focus should be first on the development of a legal framework for the peacekeeping missions carried out with the consent of States in the context of Chapter VI of the Charter. The working paper identified key elements of such a legal framework, which included a clear definition of the mandate of peacekeeping operations, including humanitarian assistance; establishing the limits to peacekeepers' right to self-defence while strengthening their protection; analysing the mechanism for apportioning responsibility between the United Nations and troop-contributing States for the damage caused in the course of peacekeeping operations; and specifying basic principles of peacekeeping, including such principles as non-interference in the internal affairs of the States parties to the conflict, neutrality and impartiality. The consideration of the legal issues of peacekeeping by the Special Committee should proceed in close collaboration with other bodies of the Organization dealing with the practical aspects of peacekeeping, especially with the Special Committee on Peacekeeping Operations.

116. A view was expressed in support of the elaboration of relevant principles of peacekeeping based on an overall review of the vast practice of the United Nations in that field. Some other delegations stressed that the Special Committee should avoid duplicating work on United Nations peacekeeping carried out by other more specialized bodies of the Organization.

117. In its introductory statement made at the 4th and 6th meetings of the Working Group, the sponsor delegation reiterated that the underlying intention of the proposal was to consolidate the legal basis for the work of the United Nations peacekeeping missions carried out with the consent of States in the context of Chapter VI of the Charter. A formulation of the relevant basic principles and criteria, based on the extensive practice of the Organization, not only was useful for the functioning of the United Nations and the Security Council, but also could serve as a model for various regional and subregional organizations and structures active in that area. The sponsor delegation also observed that contemporary peacekeeping operations were far more extensive and complex than those of traditional peacekeeping, with the peacekeepers undertaking an expanded range of tasks. Thus issues relating to peacekeeping operations remained topical and were being addressed by various organs of the United Nations.

118. As regards the content of the proposal, the sponsor delegation reiterated its key elements, drawing attention in a non-exhaustive manner to the relevant legal issues applicable to peacekeeping operations. It emphasized the need to consider the legal aspects relating to the purpose of a peacekeeping operation, which should encompass the creation of conditions conducive to a political settlement; the legal foundation on which the competence of the United Nations to establish multifunctional and complex peacekeeping operations was based, including the Charter of the United Nations, decisions of the Security Council and relevant international agreements; the mandate and various functions and components of such an operation and its command structure; the basic principles applicable, such as consent of the parties, neutrality and impartiality; the non-use of force, except in self-defence and in cases established by the mandate of the operation; and the content of the right of self-defence, including the interpretation that it encompassed the right to defend the mandates of the mission as well as to protect the civilian population. Other issues to be addressed included: legal elements relating to the machinery for the conduct of peacekeeping; the determination of and apportionment of contributions to the budget; conditions for the contribution of national contingents; the rights and obligations of transit and receiving States; the safety and welfare of the personnel of the operation; humanitarian and electoral assistance; the responsibility of the United Nations and States participating in such operations, including questions of liability; and issues relating to the criminal jurisdiction of contributing States in respect of their personnel. The sponsor pointed out that the need for the elaboration of basic legal principles for United Nations peacekeeping operations had been highlighted in a number of various documents and by various relevant bodies of the Organization, and noted that those issues should be reflected in the draft declaration on peacekeeping operations.

119. The sponsor further observed that important declarations had been adopted in the field of conflict prevention, for example, the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, etc. Unfortunately, a declaration concerning the peacekeeping operations had not yet been developed. A declaration along the lines of the present proposal for dealing with peacekeeping had yet to be prepared by the Special Committee and adopted by the General Assembly, it was to be hoped, by consensus.

120. In addition to outlining the fundamentals of the legal basis for peacekeeping as noted above, the sponsor highlighted some other possible elements to be included in the proposed declaration. Thus, the sponsor suggested that a comprehensive definition of peacekeeping operations, based on the solid foundation of the Charter, could become one of the useful elements of such a declaration.

121. The sponsor further pointed out that the mechanism of peacekeeping operations should be open to multinational participation with the consent of all the parties involved in the settlement of the conflict. An appropriate level of transparency must be ensured in the activities of peacekeeping operations.

122. While referring to the list of functions of peacekeeping operations to be included in the proposed draft declaration, the sponsor observed that any expansion of such functions should be authorized by the Security Council.

123. According to the sponsor, the proposed declaration should also indicate that the United Nations should cooperate closely with regional arrangements and agencies and might draw on their resources and assistance in order to promote the maintenance of peace and stability and the political settlement of crises and conflicts.

124. In conclusion, the sponsor pointed out that the need for the elaboration of the relevant declaration on peacekeeping operations had been highlighted in a number of various documents and by various relevant bodies of the Organization, and referred to the previous suggestions by States on the issue. However, the Special Committee on Peacekeeping Operations, which was dealing with the growing number of practical aspects of peacekeeping, had not yet produced any relevant legal documents in that field. According to the sponsor delegation, the Special Committee on the Charter was a proper forum in which to address the legal issues relevant to peacekeeping, taking into account its legal expertise and its mandate.

125. During the ensuing discussion, some delegations commended the efforts of the sponsor delegation for presenting a very complex proposal on the issue of peacekeeping. Preference was expressed for confining the proposal to a more limited set of issues so that the work on it could be more effective in the future. A point was also made that the Special Committee on Peacekeeping Operations was the only body in the Organization entrusted to conduct a comprehensive review of peacekeeping in all its aspects and that its reports traditionally referred to a list of basic guidelines and principles relevant to peacekeeping operations.

126. In response, the sponsor delegation stated that, although some of the relevant principles had been repeatedly referred to in the reports of the Special Committee on Peacekeeping Operations during its past sessions, the relevant document had yet to be adopted by the General Assembly and the Special Committee on the Charter should allocate the time needed for the consideration of the proposal during its next session and the preparation of a draft declaration on the issue.

E. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

127. During the general debate at the 240th meeting, the delegation of Cuba referred to the competence of the General Assembly in the maintenance of international peace and security and underscored the need for balance between the General Assembly and the Security Council in the exercise of their respective functions and the need for better cooperation and coordination among United Nations bodies. It urged the Special Committee to continue discussions on the revitalization of the role of the General Assembly and the improvement of its working methods. In that

connection, the sponsor was of the view that its working papers (A/AC.182/L.93 and Add.1) remained relevant and valid.

128. Some delegations shared the sponsor's view on the increased role that the General Assembly should play in matters related to the maintenance of international peace and security and characterized the working papers as useful and meriting further consideration during the current session of the Special Committee. In support of that view, it was observed that the Special Committee should make its contribution to the strengthening and democratization of the Organization in view of the principles and goals set out in the Millennium Declaration contained in General Assembly resolution 55/2 of 8 September 2000.

129. At the 5th meeting of the Working Group, the sponsor delegation drew the attention of the Committee to the main ideas of its working papers and substantiated the need for their discussion. In particular, it observed that the issues raised in the working papers were complex, sensitive and required political will and a determination on the part of Member States to consider new cooperative relationships among the principal organs of the Organization, in the first instance between the General Assembly and the Security Council.

130. The sponsor recalled the informal brainstorming consultations of the General Committee convened by the President of the General Assembly at the fifty-fifth session on improving the working methods of the Assembly. In justifying the continued relevance of those efforts, the sponsor observed that the Assembly had been marginalized and impeded from dealing with priority issues in the daily functioning of the Organization in recent years. To illustrate the broad scope of authority and the extensive range of functions foreseen but rarely utilized by the Assembly under the Charter of the United Nations, the sponsor referred to and gave its interpretation of Articles 10 to 15, 17, 24 and 109.

131. With regard to the functions and powers of the General Assembly under Article 10, the sponsor stressed that only the Assembly was empowered to discuss any questions or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter. Therefore, according to the sponsor's view, the Security Council should not be given an equal standing with the General Assembly in those matters. Referring to Articles 11 and 13 of the Charter, the sponsor expressed the view that no organ of the United Nations other than the Assembly was mandated to consider the general political principles of cooperation in matters of international peace and security. The sponsor further observed that, notwithstanding paragraph 1 of Article 12, which prevented the General Assembly from making any recommendation with regard to a dispute or situation under consideration by the Security Council, the Assembly, in accordance with Article 10, might discuss any question related to such a dispute or situation, and Member States might express their views on actions proposed by the Security Council if they so desired.

132. Noting the shared responsibilities of the Security Council and the General Assembly in the peaceful settlement of disputes, the sponsor referred to the power of the Assembly, recognized in several Assembly resolutions, to dispatch fact-finding missions. It characterized fact-finding missions as an important and effective tool in preventing conflicts and maintaining international peace and security. Elaborating further on the relationship between the General Assembly and the Security Council, the sponsor expressed the hope that the Assembly, in view of its broad powers under paragraph 1 of Article 15 to receive annual and special reports from the Council, would request the latter to provide it with more substantive reports on the measures taken by the Council to maintain international peace and security. The sponsor expressed the view that the General Assembly had the required powers under the Charter, including through the financial mechanism provided for in paragraph 2 of Article 17, to see to it that the Security Council's actions were in line with the will of the majority of States Members of the Organization. While pointing out that it was not its intention to advocate any amendments to the Charter, the sponsor also recalled the Assembly's power to amend the Charter in accordance with the procedures under Article 109. In its concluding remarks, the sponsor observed that the Charter was an extremely well-balanced document and called for the full utilization by the General Assembly of its powers under the Charter.

133. The sponsor also proposed that the Special Committee should address to the General Assembly a recommendation, along the lines of the

recommendations reflected in paragraphs 166 and 167 of its report to the Assembly at its fifty-sixth session,[22] concerning the recognition of the value of continuing to consider measures within the United Nations aimed at ensuring the revitalization of the Assembly. Some delegations supported the latter proposal and expressed their willingness to examine any written recommendation submitted by the sponsor delegation.

134. The Special Committee recognized the value of continuing to consider measures within the United Nations with a view to ensuring the revitalization of the General Assembly as the chief deliberative, policy-making and representative organ of the United Nations in order to effectively and efficiently exercise the functions assigned to it under the Charter of the United Nations.

F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

135. During the general exchange of views held at the 240th meeting of the Special Committee, support was expressed for the further study of the ideas contained in the revised proposal of the Libyan Arab Jamahiriya under the above title (A/AC.182/L.99), submitted at the 1998 session of the Special Committee.[23] At the 7th meeting of the Working Group, the sponsor delegation, in referring to its revised proposal, noted that it had nothing to add to its views, as reflected in the reports of the Special Committee on its 1998 and 2001 sessions.

136. Instead, the representative of the Libyan Arab Jamahiriya drew the attention of the Special Committee to the proposal contained in a communication addressed to the Secretary-General of the United Nations and three former heads of State, namely, Mr. Nelson Mandela of South Africa, Mr. William Jefferson Clinton of the United States of America, and Mr. Mikhail Gorbachev of the former Union of Soviet Socialist Republics, concerning the establishment of a committee of "the wise men of the world". According to the proposal, the committee would be composed of three former heads of State, representing different geographic regions and forms of civilization and cultures, who had extensive experience and knowledge in international affairs. The committee would have an advisory and consultative function and would offer advice and counsel on any subject referred to it by the Secretary-General of the United Nations. It was noted that the committee could later be transformed into an independent council of "wise men of the world". It was pointed out furthermore that Mr. Mandela, Mr. Clinton and Mr. Gorbachev had been proposed to serve as the initial members of the committee.

137. The representative of the Libyan Arab Jamahiriya concluded by expressing the hope that the Special Committee could lend its support to the idea and bring about its realization, although it did not fall strictly within its purview.

138. In the discussion, which focused on the revised proposal of the Libyan Arab Jamahiriya, it was recalled that during its consideration at the 2001 session of the Special Committee several delegations had expressed support for it, in particular its provisions relating to the improvement of the working methods of the Security Council as well as those on coordination between the roles of the General Assembly and the Security Council in the maintenance of international peace and security. Since the General Assembly was the more democratic, transparent and representative organ of the United Nations, the importance of enhancing its role in this field was stressed. The point was also made that the working paper had certain elements in common with the proposal by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness (see sect. E above).

139. On the other hand, it was noted that the revised working paper was an example of duplication of efforts; the issues raised in it were being addressed by the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council. In that connection, it was observed that comments made on the question, as contained in previous reports of the Special Committee, remained valid and relevant.

G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

140. During the general exchange of views held at the 240th meeting of the Special Committee, the representative of the Russian Federation, as one of the sponsors, referred to the proposal originally submitted by the Russian Federation in 1999,[24] the latest revision of which was contained in the revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Special Committee (A/AC.182/L.104/Rev.2),[25] to recommend, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right of self-defence. The representative of the Russian Federation pointed out that the proposal sought to reaffirm the immutability of the provisions of the Charter of the United Nations concerning the use of force and to highlight the task of strengthening the role of the United Nations in the maintenance of international peace and security.

141. At the 7th meeting of the Working Group, the representative of Belarus, as a sponsor of the revised working paper, stated that the proposed draft resolution contained in the working paper was based on one of the fundamental principles of international law set forth in paragraph 4 of Article 2 of the Charter of the United Nations, the principle of the non-use of force or the threat of force, as reaffirmed in the preamble to the draft resolution. The representative stressed that the proposal was aimed at assisting the Security Council in carrying out its primary responsibility for the maintenance of international peace and security in an effective fashion. It was also stressed that the use of armed force in international relations should be based upon the peremptory norms of the Charter and was permissible only in the exercise of the right of self-defence pursuant to Article 51 of the Charter or on the basis of a decision of the Security Council in accordance with Articles 39 and 42 of Chapter VII of the Charter, that is, with respect to threats to the peace, breaches of the peace and acts of aggression. A reference was made to different interpretations of the provisions of the Charter concerning the use of armed force under regional arrangements and by regional agencies pursuant to paragraph 1 of Article 53. The absence of detailed Charter provisions regarding the use of armed force and of those specifying what kind of enforcement action could be taken to maintain international peace and security was also highlighted. It was noted in that connection that the advisory opinion of the International Court of Justice regarding the questions raised in the proposed draft resolution would affirm that the Security Council had an immutable right to legitimize any enforcement action or use of armed force by individual States, groups of States, as well as regional and subregional bodies. Such an opinion would make it possible to achieve a uniform interpretation and application of Charter provisions concerning the application of armed force in order to restore international peace and security. A non-confrontational approach to the consideration of the proposal in the Special Committee was suggested. It was also pointed out that any military intervention aimed at combating international terrorism within the territories of foreign States should be considered by the Security Council only in the context of a threat to international peace and security. The sponsors intended to present at the next session of the Special Committee a further revision of their working paper to take into account new developments in the use of armed force for the purpose of the maintenance of international peace and security.

142. The co-sponsoring delegation of the Russian Federation supported the statement by Belarus and reiterated that the proposal was in no way meant to embarrass or condemn certain States, but that its aim was to contribute to the further development of the principle of non-use of force in existing situations where the maintenance of international peace and security was facing new threats and challenges. That would be in line with the practice and powers of the General Assembly in the field of the progressive development and codification of international law, whereby the Assembly had already contributed to the development of the principle by adopting relevant declarations.

143. Some delegations indicated that the comments they had made with regard to the proposal at previous sessions of the Special Committee were still valid and they would continue to study any revised proposal.

144. Support was expressed for the proposal by some delegations. Such a request for an advisory opinion, which was in line with the Charter, was seen as particularly opportune in the current world situation where it was felt that there had been an increase in the

use of force, or threat of the use of force, without prior authorization by the Security Council and in contravention of the provisions of the Charter of the United Nations. It was further believed that the advisory opinion by the International Court of Justice would affirm the principle of the non-use of force and contribute to the maintenance of international peace and security.

145. A view was expressed in favour of clarifying in the proposal that the use of force, in this instance, should refer only to the international arena, where States, or groups of States, were involved.

146. Views were also expressed that a request for an advisory opinion from the Court on an abstract question was neither appropriate nor necessary. The point was made that the Special Committee was already concerned about the workload of the International Court of Justice and that such a request would further overburden the Court.

147. The opinion was also articulated that the General Assembly itself could give an authentic interpretation of the principle of the non-use of force, as it had done in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, bearing in mind the changes in the development of international relations and the new risks and challenges to international peace and security.

Chapter IV
Peaceful settlement of disputes

Consideration of the proposal submitted by Sierra Leone on the establishment of a dispute prevention and settlement service

148. During the general exchange of views held at the 241st meeting of the Special Committee, several delegations, in affirming their continuing support for the revised informal working paper submitted by the delegations of Sierra Leone and the United Kingdom of Great Britain and Northern Ireland, also expressed the hope that the proposal would be adopted by consensus during the current session. The emphasis on existing means of peaceful settlement, the need to have recourse to them at an early stage and the principle of free choice of means were highlighted as positive elements of the revised draft resolution by some delegations.

149. At its 6th meeting, the Working Group, in accordance with paragraph 251 of the 2001 report of the Special Committee,[26] proceeded with a paragraph-by-paragraph consideration of the operative paragraphs of the revised draft resolution on dispute prevention and settlement entitled "Principles for the prevention and peaceful settlement of disputes" (A/AC.182/L.111/Rev.1) submitted by Sierra Leone and the United Kingdom.

150. The representative of Sierra Leone recalled the various changes that had been introduced in the operative paragraphs of the revised draft resolution, singling out the changes to operative paragraphs 1, 2 and 7 and the introduction of a new paragraph 2 bis. The sponsor also indicated that it intended to present a further revision in the light of the discussions in the Working Group.

Operative paragraph 1

151. A suggestion was made to add at the end of the paragraph the phrase "in accordance with the Charter of the United Nations" or "in accordance with the provisions of the Charter of the United Nations". It was also proposed that the concept of "prevention" could be qualified by the word "peaceful".

Operative paragraph 2

152. A suggestion was made to broaden the scope of the paragraph to take cognizance of the role of the General Assembly in the exercise of its powers under Article 14 of the Charter as well as the role of the Security Council pursuant to Article 34.

153. The point was made that the expression "before such a dispute is likely to endanger international peace and security" was inconsistent with the language of Article 33 of the Charter, which established a threshold of obligation for parties in respect of a dispute as follows: "the continuance of which is likely to endanger international peace and security".

Operative paragraph 2 bis

154. It was proposed that the paragraph should be redrafted to reflect the fact that the cooperation contemplated was with the United Nations. A preference

was also expressed for the notion of "taking measures in and promoting" the early warning of disputes and situations which might threaten international peace and security rather than "regular monitoring", which could potentially give rise to problems between States. The view was also expressed in favour of the idea of "assisting" the Secretary-General in monitoring, as opposed to "cooperating" with him in monitoring the state of international peace and security.

Operative paragraph 3

155. No comments were made concerning operative paragraph 3. However, a new paragraph 3 bis was proposed to stress the importance of prevention and early warning, which read as follows:

> "*Urges* the continued enhancement of the concrete steps taken by the Secretariat to build and improve the capacity of the United Nations to respond effectively and efficiently in matters relating to dispute prevention, including through strengthening of cooperative mechanisms for information-sharing, planning and development of preventive measures; development of a comprehensive plan for a revived early-warning and prevention system for the United Nations; training intended to support such enhanced capabilities in these areas; and cooperation with regional organizations;"

Operative paragraphs 4 to 7

156. No comments were made with regard to operative paragraphs 4, 5, 6 and 7.

Title and preambular paragraphs

157. Upon the conclusion of consideration of the operative paragraphs, other issues were raised regarding the title and the last preambular paragraph.

158. It was remarked that the title of the revised draft resolution should be reconsidered in the light of the final outcome of the proposal.

159. It was also suggested that the last preambular paragraph should be divided into two separate paragraphs, one dealing with the International Court of Justice and the International Tribunal for the Law of the Sea and the other with the "other tribunals". In particular, it was commented that the reference to "other Tribunals" was unclear and that other tribunals such as the International Tribunals for the Former Yugoslavia and for Rwanda as well as the International Criminal Court were of a different nature and served different purposes.

160. In response to the above, some delegations noted that the paragraph focused on disputes between States, while the jurisdiction of the International Tribunals for the Former Yugoslavia and for Rwanda ratione personae covered individuals. It was also observed that there were other tribunals, which dealt with inter-State disputes, including regarding trade, and of other related nature, which could be encompassed by the phrase "other tribunals". The representative of the United Kingdom clarified that the key element in the paragraph was the importance that was attached to judicial settlement as a means for dispute settlement. A suggestion was also made that the reference to other tribunals could be qualified by the phrase "set up by international agreements".

161. At the 8th meeting of the Working Group, the delegations of Sierra Leone and the United Kingdom submitted a working paper containing a further revised draft resolution on dispute prevention and settlement entitled "Prevention and peaceful settlement of disputes" (A/AC.182/L.111/Rev.2), incorporating the various proposals and suggestions made by delegations.

162. At the same meeting, the Working Group considered the draft resolution contained in document A/AC.182/L.111/Rev.2* and, on its basis, agreed upon the following draft resolution, entitled "Prevention and peaceful settlement of disputes":

"Prevention and peaceful settlement of disputes

"*The General Assembly*,

"*Recalling* the purposes and principles of the Charter of the United Nations,

"*Recalling also* Chapter VI of the Charter of the United Nations, in particular Article 33, and underlining the obligation of Member States to seek a solution to their disputes by peaceful means of their own choice,

* Document A/AC.182/L.111/Rev.2 has not been reproduced. It was substantially similar to the draft resolution on prevention and peaceful settlement, except for the additional reference in the preamble of the latter to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and the United Nations Model Rules for the Conciliation of Disputes between States.

"*Recalling further* the principles in the United Nations Millennium Declaration[27] and the Declaration of the Security Council on Ensuring an Effective Role for the Security Council in the Maintenance of International Peace and Security, particularly in Africa,[28] adopted during the United Nations Millennium Summit,

"*Recalling* the Manila Declaration on the Peaceful Settlement of International Disputes,[29] the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field,[30] the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security,[31] the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security,[32] and the United Nations Model Rules for the Conciliation of Disputes between States,[33] elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and adopted unanimously by the General Assembly,

"*Noting with appreciation* the work done by the Special Committee on the Charter to encourage States to focus on the need to prevent and to settle peacefully their disputes, which are likely to endanger the maintenance of international peace and security,

"*Emphasizing* the importance of early warning in order to prevent disputes, and emphasizing also the need to promote the peaceful settlement of disputes,

"*Recalling* the various procedures and methods available to States for the prevention and the peaceful settlement of their disputes, including those provided for in Article 33 of the Charter, as well as monitoring, fact-finding missions, goodwill missions, special envoys, observers and good offices,

"*Recalling* in particular its previous relevant declarations and resolutions concerning dispute prevention, in which, inter alia, it called upon the Secretary-General to make full use of the information-gathering capabilities of the Secretariat and emphasized the need to strengthen the capacity of the United Nations in the field of preventive diplomacy,

"*Recalling* its previous relevant resolutions and decisions concerning dispute settlement, including resolution 2329 (XXII) of 18 December 1967, in which it requested the Secretary-General to prepare a register of experts whose services States parties to a dispute might use for fact-finding in relation to the dispute, decision 44/415 of 4 December 1989, the annex to which contains a draft document on resort to a commission of good offices, mediation or conciliation within the United Nations, and resolution 50/50 of 11 December 1995, the annex to which contains the United Nations Model Rules for the Conciliation of Disputes between States,

"*Noting with satisfaction* that, pursuant to the recommendation contained in its resolution 47/120 A of 18 December 1992, the Secretary-General established a list of eminent and qualified experts for his use in fact-finding and other missions, and that this list has recently been updated,

"*Recalling* that certain multilateral treaties provide for the creation of lists of conciliators and arbitrators for use by States in the settlement of their disputes,

"*Reaffirming* the important role played by judicial mechanisms, in particular the International Court of Justice and the International Tribunal for the Law of the Sea, in the settlement of disputes between States,

"1. *Urges* States to make the most effective use of existing procedures and methods for the prevention and settlement of their disputes peacefully, in accordance with the principles of the Charter of the United Nations;

"2. *Reaffirms* the duty of all States, in accordance with the principles of the Charter of the United Nations, to use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security, and encourages States to settle their disputes as early as possible;

"3. *Draws the attention* of States to the important roles played by the Security Council,

the General Assembly and the Secretary-General in providing early warning and in working for the prevention of disputes and situations which might threaten international peace and security;

"4. *Takes note* of the paper prepared by the Secretariat entitled 'Mechanisms established by the General Assembly in the context of dispute prevention and settlement';[34]

"5. *Urges* the continued enhancement of the concrete steps taken by the Secretariat to build and improve the capacity of the United Nations to respond effectively and efficiently in matters relating to dispute prevention, including through the strengthening of cooperative mechanisms for information-sharing, planning and development of preventive measures; the development of a comprehensive plan for a revived early-warning and prevention system for the United Nations; training intended to support such enhanced capabilities in these areas; and cooperation with regional organizations;

"6. *Encourages* States to nominate suitably qualified persons who are willing to provide fact-finding services, for inclusion in the register set up by the Secretary-General pursuant to paragraph 4 of its resolution 2329 (XXII);

"7. *Encourages* eligible States to also nominate suitably qualified persons to have their names included in the lists of conciliators and arbitrators provided for under certain treaties, including the Vienna Convention on the Law of Treaties[35] and the United Nations Convention on the Law of the Sea;[36]

"8. *Requests* the Secretary-General to take such steps as he deems necessary from time to time to encourage States to designate suitably qualified persons for inclusion in the various lists referred to above which he has the responsibility to maintain;

"9. *Reminds* States that have not yet done so that they may at any time make a declaration under Article 36, paragraph 2, of the Statute of the International Court of Justice with regard to its compulsory jurisdiction in relation to any other State accepting the same obligation, and encourages them to consider doing so."

Chapter V
Proposals concerning the Trusteeship Council

163. During the general exchange of views held at the 240th meeting of the Special Committee, some delegations reiterated their view that it would be premature to abolish the Trusteeship Council or to change its status, owing to the fact that the Council's existence did not entail any financial implications for the Organization and that assigning new functions to it would require an amendment to the Charter of the United Nations. They pointed out that a change in the status of the Council or its abolition should be considered in the overall context of the amendments to the Charter and the reform of the Organization. Some other delegations observed that, though some of the proposals concerning the future of the Trusteeship Council might be reasonable in principle, the issue was not urgent, unlike other issues concerning the reform of the United Nations which were currently being considered by other bodies of the Organization. Thus, the proposal to consider the topic biennially was again put forward.

164. At the 7th meeting of the Working Group, the delegation of Malta referred to the proposal it had submitted earlier (A/50/142), to assign a new role to the Trusteeship Council to act as a guardian and trustee of the global concerns and common heritage of mankind. It observed that the proposal had attracted some support and, in its view, had been endorsed by the Secretary-General in his note entitled "A new concept of trusteeship" (A/52/849). The delegation of Malta reiterated that the three main views expressed by States in the past regarding the role of the Council remained unchanged, namely, that the Council should be reconstituted as a trustee and guardian of the global commons and common concerns, as proposed by the sponsor delegation; that it should be retained since its historic mission had not yet been fulfilled; or that the Council should be abolished since its mandate had indeed been fulfilled.

165. The sponsor delegation reiterated its view that a revised Trusteeship Council, by coordinating the relevant work of other bodies, would usefully complement their activities, rather than duplicate the work already carried out by various organs of the United Nations. In conclusion, the sponsor delegation stated that the proposal merited further consideration in

the framework of the Special Committee and expressed its readiness to participate in relevant discussions.

166. During the ensuing discussion, it was stressed that there was no urgent need to address the issue and to start an in-depth consideration of the proposal at the current stage, when there was no consensus on the reform of the Organization and relevant amendments to its Charter. A view was also expressed in support of keeping the proposal submitted by Malta on the agenda of the Special Committee.

Chapter VI

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

167. During the general exchange of views held at the 240th meeting of the Special Committee, some delegations commended and further encouraged the ongoing efforts by the Secretary-General aimed at reducing the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. Both publications were viewed as providing important information regarding the application of the Charter of the United Nations and the work of its organs.

168. A point was made that among the factors negatively affecting the work on the publications was the lack of resources, combined with the low priority such work received. Support was expressed for the continuation of the functioning of the Trust Fund for the updating of the *Repertoire of the Practice of the Security Council*, which had been established in 2000 and to which several members of the European Union had already contributed. A view was expressed in favour of utilizing the services of interns in the preparation of the publications and, for such purpose, of extending the duration of internship sessions from two to between four and six months.

Chapter VII

Working methods of the Special Committee, identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

A. Working methods of the Special Committee

169. During the general debate held at the 240th meeting of the Special Committee, delegations spoke in favour of considering methods aimed at improving the work of the Special Committee. The view was expressed that, while there was room for improvement, efforts must be accompanied by the political will on the part of delegations to advance the work of the Special Committee on this subject.

170. Some delegations highlighted certain specific recommendations for improving the work of the Special Committee, such as: not duplicating the work of other United Nations bodies; focusing on fewer topics; submitting proposals at an early stage to allow for a thorough study by the Committee; establishing a cut-off mechanism for preventing prolonged and ineffective discussion of some proposals year after year; considering certain issues once every two or three years instead of annually; and using a format for the reports of the Special Committee which was similar to the procedural format employed by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996. The importance of beginning meetings on time and making better use of conference services allocated for the meetings of the Special Committee was also stressed. Concerning the duration of the sessions of the Committee, the view was expressed that it was not necessary to shorten them, as that would reflect negatively on the work of the Special Committee.

171. At the 7th meeting of the Working Group, the delegation of Japan introduced a working paper on further revisions to the draft paragraph to be inserted into the report of the Special Committee

(A/AC.182/L.108/Rev.1). The working paper read as follows:

"**Paragraph XX**

"In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution 56/86 of 12 December 2001, the Special Committee identified the following measures to improve its working methods and enhance its efficiency:

"(a) Any delegation wishing to submit a new proposal is encouraged:

"(i) To bear in mind the mandate of the Special Committee, and to confirm to the extent possible, through consultation with the Secretariat if necessary, whether the new proposal would entail any duplication of the work being done by other bodies on the same subject;

"(ii) To submit the proposal as far in advance of the session as possible.

"(b) A delegation submitting a proposal is encouraged:

"(i) To request the Committee to conduct a preliminary evaluation as to its necessity and appropriateness at the first session of the Committee;

"(ii) After an exchange of views is held on its proposal, to assess the priority and the urgency of the proposal in comparison with other proposals discussed in the Committee, and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal;

"(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to decide whether the discussion on the proposal should be continued, taking into account the possibility of reaching a general agreement in the future.

"(c) The Special Committee is encouraged:

"(i) To ensure that the meeting is conducted as efficiently as possible in order to minimize waste of time and resources, including allocated conference services;

"(ii) To accord priority to the consideration of those areas on which a general agreement is possible, bearing in mind the relevant provisions of General Assembly resolution 3499 (XXX) of 15 December 1975;

"(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

"(iv) To review periodically other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report."

172. In its introductory remarks, the sponsor delegation explained that the revised version reflected the views and proposals on the topic expressed by delegations at the previous sessions of the Special Committee. The sponsor recalled that the General Assembly, in its resolution 56/86, had requested the Special Committee to consider the topic on a priority basis and expressed the hope that the working paper would contribute to the improvement of the working methods of the Special Committee, and its effectiveness, in a concrete manner.

173. Delegations welcomed the revised working paper and expressed appreciation to the Japanese delegation for its efforts in the endeavour. Some delegations endorsed the revised proposal, agreeing with its structure, and expressed readiness to proceed with a constructive review thereof. Some other delegations expressed the view that certain proposed provisions in the working paper could have a negative impact on the work of the Special Committee, instead of bringing about an improvement. In support of that view, the point was made that the language of the revised proposal was such as not to allow for flexibility in the Committee's carrying out of its work. One delegation expressed the view that the provisions in the paper would place more restrictions on the work of the Special Committee and lead to greater ineffectiveness, as well as violating the principle of the sovereign equality of States enshrined in the Charter of the United Nations, inasmuch as the proposed provisions would restrict their right to submit proposals within the framework of the mandate of the Special Committee. In support of that view, it was also suggested that consideration should be given to drawing up rules for

the Special Committee that would regulate its work and that would be agreeable to all States. The view was furthermore expressed that it might be preferable for the Special Committee to devote attention to one manageable topic per session, focusing on a topic on which progress could be predicted.

174. The Working Group then proceeded to the consideration of the working paper.

Introductory paragraph

175. It was suggested that, in accordance with the practice of the Special Committee, the paragraph should be redrafted to indicate that the Committee "recommended" measures, instead of identifying them. The suggestion was also made that the words "working methods" should be replaced with the words "guiding methods" or "guiding recommendations", to allow for more flexibility.

Paragraph (a)

176. As regards subparagraph (i), the sponsor delegation, in introducing the proposed provision, explained that there was no intention to prejudice the decision of the delegation wishing to submit a proposal, but rather to offer encouragement in avoiding duplication of work.

177. Some delegations were of the view that the mandate of the Special Committee as set out by the General Assembly in its resolution 3499 (XXX) of 15 December 1975 should be reflected in the subparagraph. As a drafting suggestion, it was also observed that the name of the Special Committee should appear in full in the first line of the text. It was further recommended that the provision should be divided into two parts, creating a new subparagraph that would make it clear that the delegation submitting a new proposal would ensure that there was no duplication of work being done by other bodies on the same subject. The view was also expressed that it was not necessary, and was in fact inappropriate, for the delegation submitting a new proposal to consult the Secretariat thereon. In that connection, it was suggested that the words "through consultation with the Secretariat if necessary" should be deleted. On the other hand, some delegations expressed their preference for retaining the wording of the subparagraph.

178. As regards subparagraph (ii), the sponsor delegation, in introducing the proposed provision, explained that, without specifying any duration, the delegation wishing to submit a new proposal was encouraged to submit it as far in advance of the session of the Special Committee as possible.

Paragraph (b)

179. In introducing the paragraph, the sponsor delegation explained that subparagraphs (i), (ii) and (iii) belonged to the different stages of the consideration of the proposal before the Special Committee, but that the final decision on how to treat the proposal remained within the discretion of the delegation submitting a proposal.

180. As regards subparagraph (i), it was suggested that the expression "preliminary evaluation" should be replaced by the words "preliminary debate". Some delegations felt that the concept of "necessity and appropriateness" was also reflected in the wording of subparagraph (ii) and that, therefore, those words could be removed from subparagraph (i). It was observed that the proposed requirement of a "preliminary evaluation" was not sufficiently clear and in practice could impede the work of the Special Committee on new proposals advanced by delegations. Conversely, some delegations felt that it was not necessary to change the wording.

181. Concerning subparagraph (ii), the sponsor delegation explained that, in accordance with the thrust of the provision, the delegation submitting a proposal would be encouraged to consider the postponement or biennialization of the consideration of its proposal only when the delegation deemed it appropriate, taking into account the assessment of the priority and urgency of the proposal.

182. The suggestion was made that the words "to consider" should be replaced by the words "to recommend". One delegation queried the appropriateness of an assessment on the priority and urgency of the new proposals in comparison with other proposals discussed in the Special Committee. It was suggested that the words "where appropriate" and the reference to "biennialization" should be deleted, in order to allow more flexibility to the Committee in its approach to its work. In that regard, a contrary view was expressed to the effect that the paragraph could be reformulated to foresee that certain proposals might be considered by the Committee on even a triennial basis.

183. Concerning subparagraph (iii), the sponsor delegation observed that the proposed provisions would

not abridge the notions of State sovereignty, as discretion would remain with the sponsoring delegation.

184. It was observed that, instead of having the Special Committee "decide" whether the discussion on the proposal should be continued, the Committee should make a recommendation on the matter. Accordingly, it was suggested that the words "to decide" should be replaced by the words "to recommend". The view was expressed that it was practicable and useful to allow for the possibility of ending the debate on a proposal that did not enjoy sufficient support in the Committee that had continued over many years. In that connection, it was recalled that the idea of a cut-off mechanism allowing for a fixed deadline for the consideration of a proposal had been previously suggested to the Committee and had been discussed by it. On the other hand, the point was made that it was not for the Special Committee to decide whether or not to continue discussion on a proposal, but rather for the delegation that had submitted the proposal.

Paragraph (c)

185. In introducing subparagraph (i), the sponsor delegation recalled that during the previous session the utilization of resources by the Special Committee had dropped to 69 per cent. The sponsor expressed the view that the proposed provision was designed to minimize waste of time and resources allocated to the Committee.

186. Some delegations objected to use of the word "waste" in the text since, in their view, it gave a wrong impression that the Special Committee wasted time and resources. In support of that view, it was observed that instances when the Committee was not able to reach a consensus among its members on certain proposals should not be equated with "waste of time and resources". It was reiterated that the absence of concrete results on some proposals should rather be attributed to a lack of political will on the part of some members of the Committee. It was also recalled that the Committee had produced valuable documents in the past, the Manila Declaration on the Peaceful Settlement of Disputes being one of them. In that connection, the point was made that the Special Committee should rather be judged by its results, and not by the time and resources spent on the consideration of its topics.

187. In introducing subparagraph (ii), the sponsor delegation pointed out that the provision corresponded to paragraph (b) (iii), and that in order to achieve concrete results priority should be accorded to the consideration of those areas on which general agreement was possible, pursuant to paragraph 2 of General Assembly resolution 3499 (XXX).

188. The necessity for the Special Committee to reach "a general agreement" before the substantive consideration of a proposal was questioned by some delegations. In that connection, the attention of the Committee was drawn to cases in the practice of the Organization when work on certain initiatives had started in the absence of a general agreement thereon but had subsequently resulted in the adoption of a document on the basis of consensus, such as had been the case with the Definition of Aggression.

189. In introducing subparagraph (iii), the sponsor delegation observed that the provision would not prejudice the decision regarding the duration of the next session of the Special Committee.

190. The view was expressed that it was up to the General Assembly to make a determination on the duration of the sessions of the Special Committee and accordingly it was suggested that the subparagraph should be deleted. Some delegations, however, wished to retain the subparagraph as, in their view, it was appropriate for the Committee in its report to make the relevant recommendation to the General Assembly on the matter.

191. In introducing subparagraph (iv), the sponsor delegation emphasized that the subparagraph would not prejudice any review of other ways and means of improving the working methods of the Special Committee.

192. In the course of the debate, one delegation made the statement that it was important for the effective functioning of all organs of the United Nations system that all Member States should be represented on an equal footing with other States in the regional groups, and in that regard expressed the hope that it soon would be able to assume its rightful place in the relevant regional group. Another delegation stated that the Special Committee did not have the mandate to review the admissibility of States to regional groups.

193. In its concluding remarks at the 7th meeting of the Working Group, the sponsor delegation welcomed

the constructive comments made with regard to its revised proposal. At the 8th meeting, the sponsor informed the Working Group that it had held informal consultations with interested delegations on its revised working paper and announced its intention to submit a revision thereof at the next session of the Special Committee which would reflect the comments and suggestion made during the debates in the Working Group at the current session as well as during the informal consultations. The sponsor also expressed the hope that the Special Committee would be in a position to adopt the new revised proposal at its next session. The Working Group thus concluded the consideration of the revised working paper submitted by Japan (A/AC.182/L.108/Rev.1).

B. Identification of new subjects

194. During the general exchange of views at the 240th meeting, caution was urged against adding any new topics to the already full agenda of the Special Committee.

195. At the 8th meeting of the Working Group, one delegation recalled its suggestion for a medium-term programme of work made at the previous session of the Special Committee, as reflected in paragraph 298 of the 2001 report of the Committee,[37] and expressed the view that such a programme would be beneficial to the work of the Special Committee. Furthermore, referring to the new subjects proposed at the previous session of the Committee, it recalled the following subjects for possible inclusion in the agenda: "Basic conditions of 'provisional measures' under Article 40 of the Charter employed by the Security Council"; "Clarification of the term 'threat to international peace and security'"; and "Ways and means to overcome negative consequences of globalization and ensure the supremacy of law in international relations".

196. In support of that view, it was further suggested that all four subjects reflected in paragraph 298 of the 2001 report merited the attention of the Special Committee, and therefore should be considered for inclusion in the agenda.

197. Recalling other views expressed at the previous session on the topic, it was also reiterated that consideration of any new agenda item, including the ones mentioned above, should be postponed until such time as the agenda of the Special Committee became lighter and the Committee then could better make a decision on adding any new subjects.

C. Revitalization of the role of the General Assembly and improvement of coordination among United Nations bodies

198. During the general debate at the 240th meeting of the Special Committee, the necessity of continuing the discussion on the revitalization of the role of the General Assembly was highlighted. A view was also expressed in favour of improving coordination among United Nations bodies, particularly between the Security Council and the General Assembly.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1 and A/56/303.

[3] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 50-97.

[4] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[5] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116.

[6] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.

[7] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[8] Ibid., para. 84.

[9] Ibid., para. 99.

[10] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 101.

[11] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[12] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 105.

[13] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 107.

[14] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 189.

[15] Ibid., para. 231.

[16] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 163-193.

[17] Ibid., para. 194.

[18] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33).

[19] An Agenda for Peace: preventive diplomacy, peacemaking and peacekeeping: report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992 (A/47/277-S/24111), and its Supplement (A/50/60-S/1995/1).

[20] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. IV.

[21] A/AC.182/L.89/Add.2 and Corr.1; see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[22] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33).

[23] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 98.

[24] A/AC.182/L.104; see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 89. The delegation of Belarus subsequently indicated that it wished to be reflected as sponsor of the proposal; see ibid., para. 90.

[25] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[26] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33).

[27] General Assembly resolution 55/2.

[28] Security Council resolution 1318 (2000), annex.

[29] General Assembly resolution 37/10, annex.

[30] General Assembly resolution 43/51, annex.

[31] General Assembly resolution 46/59, annex.

[32] General Assembly resolution 49/57, annex.

[33] General Assembly resolution 50/50, annex.

[34] A/AC.182/2000/INF/2.

[35] United Nations, *Treaty Series*, vol. 1155, No. 18232.

[36] See *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 with Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

[37] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33).

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